

Board of Adjustment
Variance Consideration
Appeal of Administrative Interpretation



City Of Sedona
Community Development Department
102 Roadrunner Drive Sedona, AZ 86336
(928) 282-1154 • Fax: (928) 204-7124

Request for:

- ☐ Variance Consideration
☒ Appeal of Administrative Interpretation

Date Rec'd:	
Case #:	
Fee Paid:	

Property/Business Owner Information:

☐ Primary Contact

Name:	Son Silver West Gallery, Inc. (see attachment)	Phone:	
Address:	1476 State Route 179, Sedona, Arizona 86336	Cell Phone:	
E-mail:	rio@sonsilverwest.com		

Authorized Agent (if applicable) Information:

☒ Primary Contact

****Please attach a letter of authorization from property/business owner (see attached Authorization Letters)**

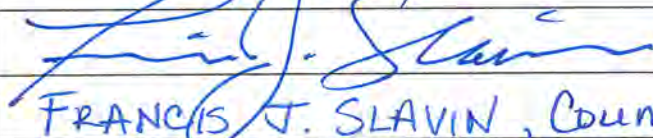
Name:	Francis J. Slavin, Esq. of Francis J. Slavin, P.C.	Phone:	602-381-8700
Address:	2198 East Camelback Road, Suite 285, Phoenix, Arizona 85016	Cell Phone:	Fax: 602-381-1920
E-mail:	b.slavin@fjslegal.com ; h.dukes@fjslegal.com		

Pursuant to the City of Sedona Land Development Code, this is a formal request for a variance consideration or appeal of an administrative interpretation regarding the following:

Note: Requestor should be as specific as possible regarding the reasons for the variance consideration or appeal and refer to the specific sections of the Sedona Land Development Code being contested. (Attach additional pages if more space is required)

Interpretations and Enforcement Decisions Made by Community Development Director Audree Juhlin in the 2 notices of violation and a memorandum issued to Son Silver West Gallery, Inc. and the Robsons dated November 10, 2015.

Specific issues on appeal to the Sedona Board of Adjustment are set forth in the attached narrative submitted by Francis J. Slavin, P.C. dated November 25, 2015.

Signature:		Date:	11.25.15
Print Name/Title:	FRANCIS J. SLAVIN, Counsel and Authorized Agent		

**Property and Business Owners Appealing Decision of Community Development Director
November 25, 2015**

Son Silver West Gallery, Inc.

1476 State Route 179
Sedona, Arizona 86336

Linda Rose Robson and William B. Robson

Trustees of the Linda Rose Robson Living Trust dated July 12, 1999

1476 State Route 179
Sedona, Arizona 86336
Tracts 42 and 41 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-012A

Linda Rose Robson and William B. Robson

Trustees of the Linda Rose Robson Living Trust dated July 12, 1999, and

Linda Rose Robson and William B. Robson

Trustees of the William B. Robson Living Trust dated July 12, 1999

1535 State Route 179
Sedona, Arizona 86336
Tract 40 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-011

Rio Cody Robson

61 Arrow Drive
Sedona, Arizona 86336
Tract 45 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-016

Linda Rose Robson and William B. Robson

Trustees of the William B. Robson Living Trust dated July 12, 1999, and

William B. Robson and Linda Robson

365 Bowstring Drive
Sedona, Arizona 86336
Tract 49 of Broken Arrow Subdivision, Book 2 of Maps, Page 71, CCR.
APN: 401-31-020

November 25, 2015

VIA HAND-DELIVERY

Mr. Joel Gilgoff, Chairman
CITY OF SEDONA
Board of Adjustment
102 Roadrunner Drive
Sedona, Arizona 86336

**RE: Son Silver West Authorization Letter for Appeal of Director's Interpretation
and Decision to Board of Adjustment**

Dear Chairman Gilgoff:

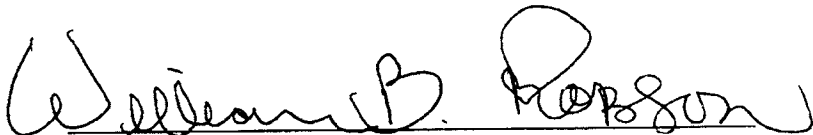
On behalf of Son Silver West Gallery, Inc., the William B. Robson Living Trust, dated July 12, 1999, and the Linda Rose Robson Living Trust, dated July 12, 1999, we hereby authorize the Law Offices of Francis J. Slavin, P.C. to submit an appeal of the Community Development Director's decisions and interpretations issued as part of the two Notices of Violation and the Memorandum dated November 10, 2015, as applicable to Tracts 40, 41, 42, and 49 of the Broken Arrow Subdivision, recorded at Book 2 of Maps, Page 71, Official Records of the Coconino County Recorder's Office.

Yours very truly,

A handwritten signature in black ink that reads "Linda Rose Robson". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

Linda Rose Robson

Trustee of the Linda Rose Robson Living Trust dated July 12, 1999
Trustee of the William B. Robson Living Trust dated July 12, 1999
President/CEO of Son Silver West Gallery, Inc.

A handwritten signature in black ink that reads "William B. Robson". The signature is fluid and cursive, with the first name "William" being the most prominent.

William B. Robson

Trustee of the Linda Rose Robson Living Trust dated July 12, 1999
Trustee of the William B. Robson Living Trust dated July 12, 1999

November 25, 2015

VIA HAND-DELIVERY

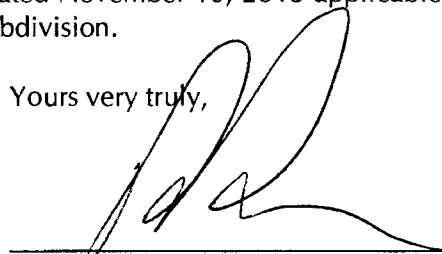
Mr. Joel Gilgoff, Chairman
CITY OF SEDONA
Board of Adjustment
102 Roadrunner Drive
Sedona, Arizona 86336

**RE: Son Silver West Authorization Letter for Appeal of Director's Interpretation
and Decision to Board of Adjustment**

Dear Chairman Gilgoff:

On behalf of Son Silver West Gallery, Inc., Robson Design, and as the individual property owner of Tract 45 of the Broken Arrow Subdivision, recorded at Book 2 of Maps, Page 71, Official Records of the Coconino County Recorder's Office, I hereby authorize the Law Offices of Francis J. Slavin, P.C. to submit an appeal of the Community Development Director's decisions and interpretations issued as part of the two Notices of Violation and the Memorandum dated November 10, 2015 applicable to Tracts 40, 41, 42, 45 and 49 of the Broken Arrow Subdivision.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Rio Cody Robson', written over a horizontal line.

Rio Cody Robson
Owner of Tract 45 of Broken Arrow Subdivision
Vice-President of Son Silver West, Inc.
Representative of Robson Design

SON SILVER WEST APPEAL TO SEDONA BOARD OF ADJUSTMENT
November 25, 2015

I. INTRODUCTION

Visitors traveling north along State Route 179 are welcomed to Sedona by a familiar oval sign hung between large wooden posts with the outline of a Native American chief mounted atop a horse, his feathered headdress prominent against a fading red sunset. To many of Sedona's visitors and residents, the Son Silver West sign is a landmark as familiar as the majestic, multi-hued red rocks which tower above the landscape, embodying the traditional western art and unique beauty for which Sedona is renowned. For 34 years, the Robson family has molded and refined its Son Silver West business to become one of the most successful and widely recognized art galleries in this community, the State and the Southwest. Their passion for art coupled with dedication, hard work and creativity has drawn repeat visitors and residents of Sedona alike to its location at 1476 SR 179. As one of the longest operating family-owned small businesses in Sedona, Son Silver West continues to contribute to the distinctive Sedona experience as well as the long-term financial viability of the community.



In 1960, buildings were constructed on Tract 42 of the Broken Arrow Subdivision, which is the current location of the main buildings on the Son Silver West Property. It was at that time the former "La Galleria" began operating as a commercial art gallery with outdoor retail space on Tract 42 by Mary Ernestine Nestler Todd and her late husband.¹ The La Galleria was in operation prior to Coconino County adopting its first zoning ordinance in 1964.² Thus, the gallery and its primary structures on Tract 42 have operated as a legal non-conforming use since 1964.³

In 1981, Bill and Rose Robson purchased what was then known as La Galleria and moved to Sedona from northern California. During the first few years of Son Silver West's

¹ See "Background" section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit "3"**.

² *Id.*

³ *Id.*

existence, the Robsons struggled to make ends meet while operating the art gallery. The Robsons searched for ways to revitalize their new business to attract main-stream customers living in and traveling to Sedona. Bill Robson, a ceramicist by education and training, began making and selling pottery and periodically loaded up his pick-up truck hauling strings of chilies purchased in New Mexico to sell the ever-popular chilies at Son Silver West. The Robson's ingenuity saved Son Silver West in those early years and allowed them to adjust their business model to meet ever-changing retail demands over the next 3 decades.

The Robson's eventually came to learn that their boundless ingenuity that helped jump-start Son Silver West was to be tempered by zoning restrictions. Shortly after Sedona incorporated in 1988, the City of Sedona rezoned the commercial art gallery, workshop, and retail use for single family residential use! By state law, the Robsons were allowed to continue doing business as a legal non-conforming use. In 1992, a conditional use permit was approved by the City Planning and Zoning Commission allowing the expansion of the Son Silver West legal non-conforming use onto an adjoining parcel of land to the south, Tract 41. Since 1992, the Robsons have obtained various approvals and permits from the City of Sedona to erect additional buildings, shade structures and fences. From time to time, the Robsons received interpretations and also notices of violation from former Community Development Director John O'Brien arising from the Son Silver West legal non-conforming use status. In these prior occasions, the Robsons either undertook corrective action required by Director O'Brien or submitted evidence demonstrating compliance with their legal non-conforming use status to the satisfaction of the Director.

Director O'Brien performed an inspection of the Son Silver West property in connection with a pending enforcement action and issued a formal decision on December 21, 2011 finding the Son Silver West property to be in compliance with no outstanding violations (the "**December 21, 2011 Decision**"). Since the issuance of the December 21, 2011 Decision, the uses, buildings, and structures on the Son Silver West property have remained the same. The Robsons rightfully relied upon the December 21, 2011 Decision from Director O'Brien, thereafter expending substantial sums of money investing in their business with an assurance that their Son Silver West property was in compliance with City codes and their existing zoning and building permit approvals.

Director O'Brien retired in July of 2012. He was replaced by Kevin Snyder from the City of Auburn, Washington. Fast-forwarding almost 3 years after Director O'Brien's December 21, 2011 Decision, the Robsons received a Notice of Violation from the newly appointed Community Development Director, Audree Juhlin, dated October 8, 2014 (the "**2014 NOV**"). The 2014 NOV was limited to alleged violations for the following parcels owned by the Robsons, which are located adjacent to Son Silver West Tracts 42 and 41: (1) a residence located on Tract 45 with an address of 61 Arrow Drive, (2) a residence located on Tract 49 with an address of 365 Bowstring, and (3) a vacant Tract 40 with frontage along SR 179 and adjacent to the Son Silver West parking lot on the south. The 2014 NOV did not address any violations on the Son Silver West Property (Tracts 42 and

41), having the legal effect of ratifying the prior December 21, 2011 Decision as a formal, binding decision of an authorized City official.

After evaluating their options and with the encouragement of Director Juhlin, the Robsons decided to pursue a Community Plan amendment and rezoning approval for Planned Development zoning on Tracts 40, 41, 42 and 45. Enforcement of the 2014 NOV was placed on hold by Director Juhlin while the Robsons processed these applications. The Robsons held an initial neighborhood meeting to explain their plan and received positive feedback. Unforeseeably, the Robsons were met with opposition at their second neighborhood meeting. Despite the Robson's attempts to amend their pending applications to rezone only the existing Son Silver West Property and the vacant Tract 40 to Planned Development zoning district, the mounting opposition and resulting negative staff report forced the Robsons to withdraw their Community Plan amendment and rezoning applications in August of 2015.

On September 9, 2015, the Robsons and their legal counsel met with Director Juhlin, City Attorney Robert Pickels and City Manager Justin Clifton. The purpose of the meeting was to discuss the City's plan to commence enforcement proceedings under the 2014 NOV as well as additional alleged violations for the Son Silver West Property. The additional violations alleged by Director Juhlin directly contradicted the December 21, 2011 Decision by former Director O'Brien. With the agreement of the City, the Robson's counsel submitted a legal memorandum dated September 22, 2015 providing the history of the Son Silver West business operations and its legal non-conforming use rights, the history of related City approvals, enforcement actions and decisions, the binding effect of Director O'Brien's December 21, 2011 Decision and the Robson's reliance thereon, and the Robson's vested rights on the Son Silver West Property. A copy of the SSW Memorandum dated September 22, 2015 and the attached exhibits provided to Director Juhlin are submitted herewith as **Exhibit "A."**

The evidence submitted in the SSW Memorandum was altogether rejected by the City. Director Juhlin proceeded to serve the Robsons and Son Silver West with 2 additional Notices of Violation dated November 10, 2015 (the "**2015 NOV**") as well as a memorandum providing Director Juhlin's interpretation and decision regarding the authority of former Director O'Brien to render his December 21, 2011 decision (the "**Director's 2015 Memorandum**").⁴

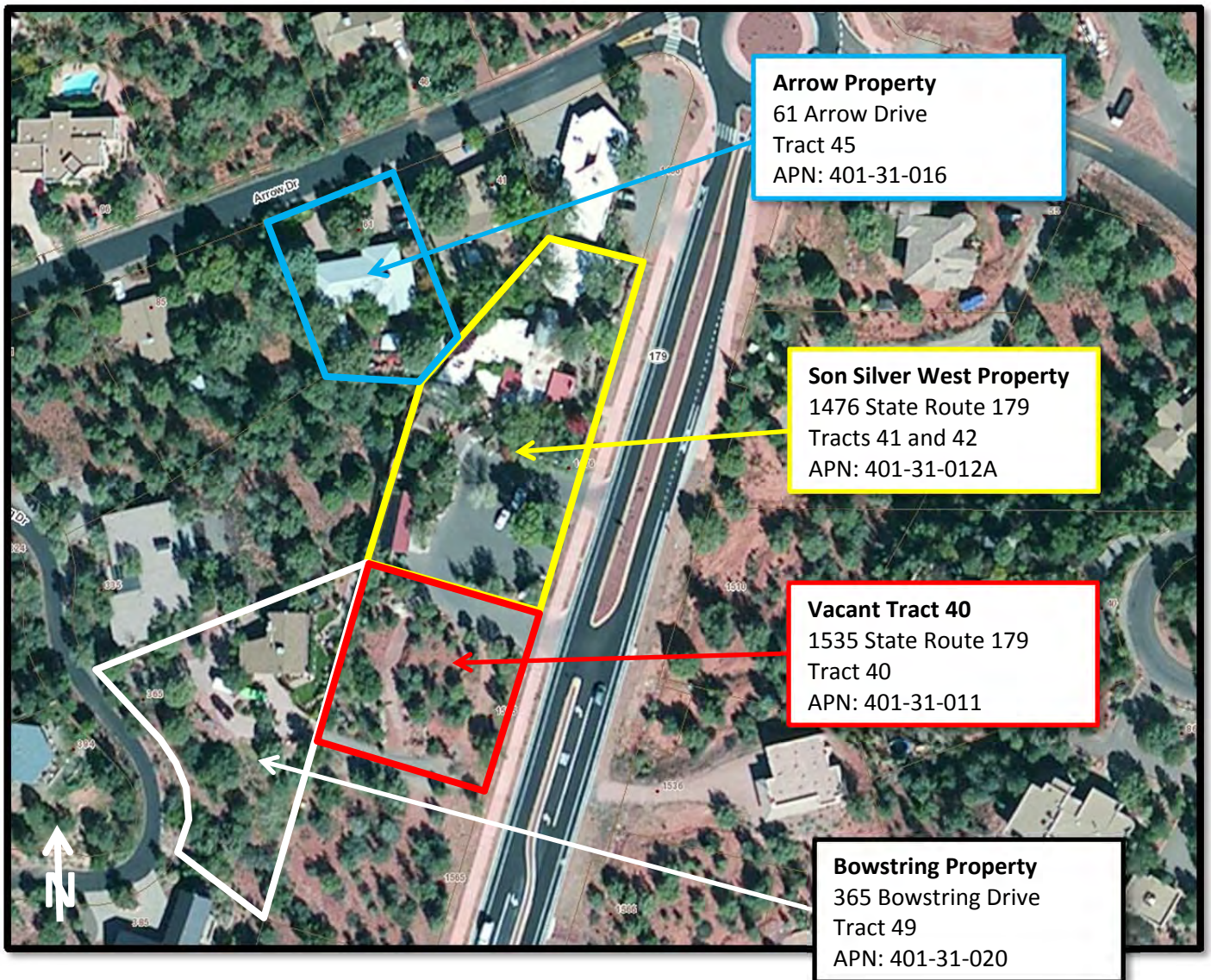
As a result, on behalf of clients Son Silver West Gallery, Inc. and the Robsons, Francis J. Slavin, P.C. hereby submits this appeal to the Sedona Board of Adjustment arising from the interpretations issued by the Community Development Director as set forth in the 2015 NOVs and the Director's 2015 Memorandum dated November 10, 2015 with regard to the following properties:

⁴ City Attorney Robert Pickels later authored a letter to Attorney Francis (Buzz) Slavin dated November 24, 2015 which set forth his reasoning questioning the scope of former Director John O'Brien's authority.

**PROPERTIES OWNED BY ROBSONS WITHIN BROKEN ARROW SUBDIVISION
LYING ALONG WEST SIDE OF SR 179 & SOUTH OF ARROW DRIVE-MORGAN ROAD ROUNDABOUT**

Address	Assessor's Parcel No.	Broken Arrow Tract No.	Parcel Size	Property Owner	Referenced Terms in this Memorandum
1476 State Route 179	401-31-012A	Tract 42 & 41	0.83 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to collectively as "Son Silver West Property" or individual tracts as "Tract 42" & "Tract 41"
1535 State Route 179	401-31-011	Tract 40	0.48 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to as "Vacant Tract 40"
61 Arrow Drive	401-31-016	Tract 45	0.38 ac	Rio Cody Robson	Referred to as "Arrow Parcel"
365 Bowstring Drive	401-31-020	Tract 49	0.65 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to as "Bowstring Parcel"

COCONINO COUNTY ASSESSOR'S PARCEL MAP OF SON SILVER WEST AND ROBSON PROPERTIES



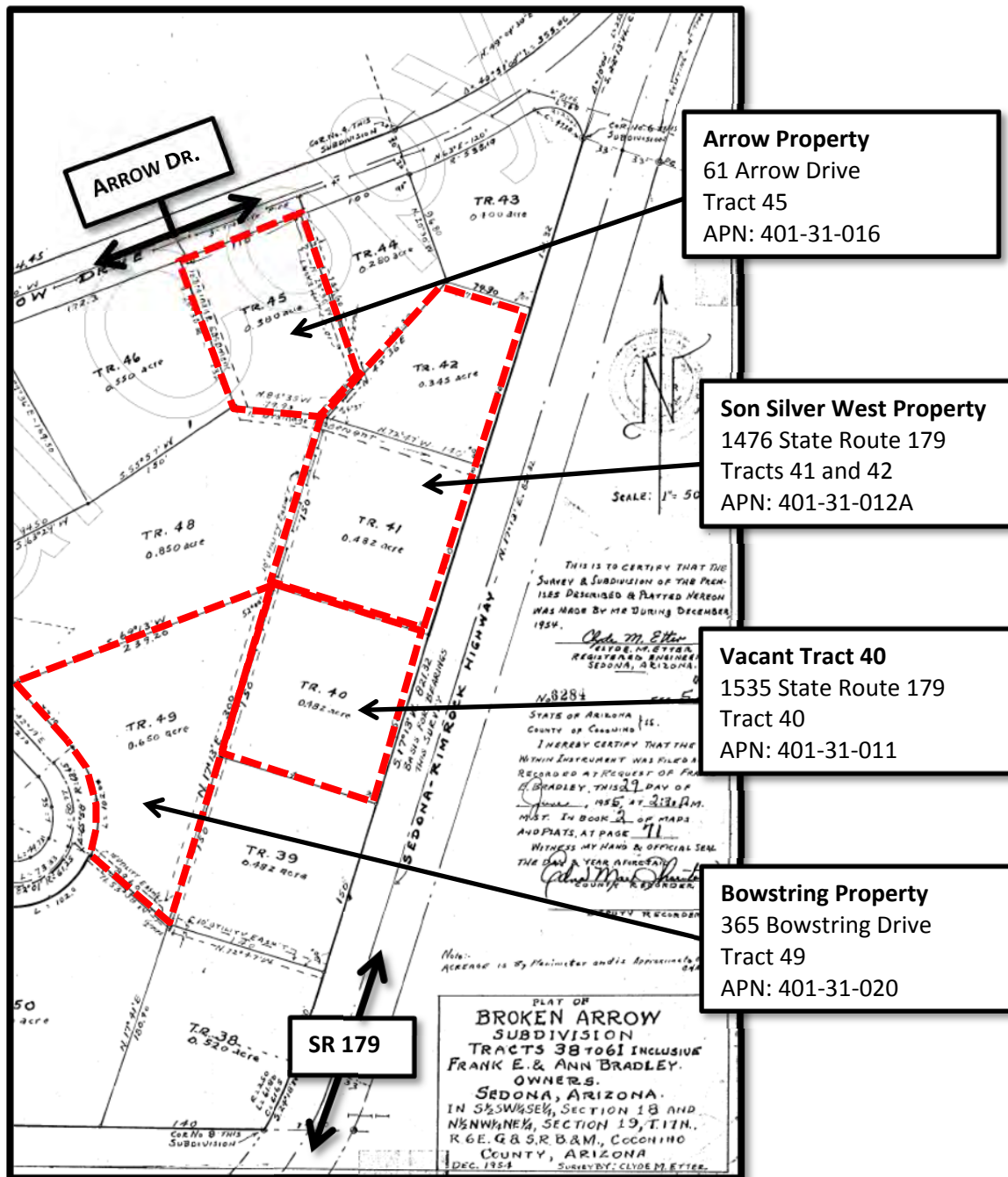
II. HISTORY

Our firm provides the following abbreviated statement of facts with regard to Son Silver West based upon records that were made available on the City of Sedona website and records provided by the Robsons.

- A. The Broken Arrow subdivision plat was recorded on June 29, 1955** at Book 2 of Maps Page 71, Official Records of Coconino County Recorder ("CCR") (hereinafter the "**Broken Arrow Plat**").⁵ The following lots designated on the Broken Arrow Plat are currently owned by the Robsons:

⁵ Broken Arrow Plat is attached to SSW Memorandum as **Exhibit "1"**.

BROKEN ARROW PLAT, BOOK 2 OF MAPS, PAGE 71, CCR



B. Deed Restrictions for the Broken Arrow subdivision were recorded on July 21, 1955 in Book 77, Page 509, CCR.⁶ The Deed Restrictions state in part as follows:

⁶ See Deed Restrictions attached to SSW Memorandum as **Exhibit "2"**.

9. The forgoing restrictions and covenants run with the land and shall be binding on all owners of said Tracts and all persons claiming under then [sic] until January 1, 1966, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a majority of the then owners of the Tracts, it is agreed to change the said covenants in whole or in part.

...

13. The business district shall be confined to those Tracts numbered 38 to 44 inclusive, fronting on Sedona Rimrock Highway.

As set forth in Paragraph 13 of the Deed Restrictions, the developer of the Broken Arrow subdivision contemplated business uses on tracts lying along the west side of State Route 179, including the Son Silver West Property and Vacant Tract 40.

- C. **In 1960, buildings were constructed and the former “La Galleria” began operating as a commercial art gallery with outdoor retail space on Tract 42** by Mary Ernestine Nestler Todd and her late husband.⁷ The La Galleria was in operation when Coconino County adopted its first zoning ordinance and initiated residential zoning for Tract 42 in 1964.⁸ Thus, the gallery and its primary structures on Tract 42 were allowed to continue to operate as a legal non-conforming use since 1964.⁹

According to a letter from Ms. Todd to former Sedona Community Development Director Tom Schafer dated February 2, 1990¹⁰, during the Todd’s ownership of La Galleria from 1960 to 1981, the Todds “conducted the outdoor display of pottery, chimes, chilies, and southwestern art-and-craft items.” Ms. Todd also states in her letter that the “outdoor display area and gallery presently maintained by the Robsons is compatible with that which was done at that location in my previous business.”

- D. **In 1964, Coconino County adopted its first zoning ordinance and initiated C-RS-18,000 (Single Family Residential) zoning for all property located within the Broken Arrow subdivision, including the La Galleria on Tract 42.**¹¹ The initial

⁷ See “Background” section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit “3”**.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Letter from Ms. Todd to Director Tom Schafer attached to SSW Memorandum as **Exhibit “4A”**.

¹¹ See “Background” section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit “3”**.

zoning of Tract 42 to a single family residential zoning district rendered the La Galleria commercial art gallery and associated outdoor retail display areas a legal non-conforming use under Ariz. R. Stat. § 9-462.02(A).

- E. On January 20, 1981, Tract 42 and the La Galleria were purchased by William B. and Linda Rose Robson** by Joint Tenancy Deed recorded in Book 820, Page 872, CCR.¹² At the time of the Robson's purchase, the commercial gallery and associated retail uses on Tract 42 remained a legal non-conforming use within the unincorporated territory of Coconino County. The City of Sedona was not incorporated until 1988. From 1981 to the present, the Robsons have continuously operated the commercial art gallery and associated retail uses as a legal non-conforming use, renaming the "La Galleria" as "Son Silver West."
- F. On March 4, 1987, William B. and Linda Rose Robson purchased Tract 41** by deed recorded in Book 1144, Page 786, CCR.¹³ At the time of the Robsons purchase, Tract 41 was located within the unincorporated territory of Coconino County.
- G. The City of Sedona was incorporated in January 1988.** Upon incorporation, the City of Sedona adopted an interim zoning code and placed residential zoning on the Son Silver West Property comparable to the existing Coconino County C-RS-18,000 zoning district.
- H. On August 16, 1991, the City of Sedona approved Son Silver West's plans to repair the roof and structure of an existing chili cage on Tract 42 located on the east side of the existing gallery building along Highway 179.**¹⁴ According to the Son Silver West records recently posted to the City of Sedona FTP site on November 24, 2015, final inspections of the chili cage repairs were performed by the City on October 17, 1991.¹⁵ Pictures attached to the City's 1991 chili cage permit records show strings of chilies being dried and sold on the Son Silver West Property.¹⁶

¹² Joint Tenancy Deed conveying Tract 42 from Mary Ernestine Nestler Todd to William Robson and Linda Rose Robson attached to SSW Memorandum as **Exhibit "4B"**.

¹³ Joint Tenancy Deed conveying Tract 41 from John T. Brooks and Sally M. Brooks to William Robson and Linda Rose West Robson attached hereto as **Exhibit "B"**.

¹⁴ See approved Chili Cage Plan, attached to SSW Memorandum as **Exhibit "5"**.

¹⁵ See Permit No. B1517 issued for Chili Cage repair, attached hereto as **Exhibit "D"**.

¹⁶ *Id.*

Coconino County Assessor Parcel Map – Location of Permitted Chili Cage



- I. On November 26, 1991, the Sedona City Council adopted the first Sedona Community Plan which designated the Son Silver West Property as Commercial on the Land Use Map.¹⁷
- J. On September 5, 1992, the Sedona Planning and Zoning Commission approved Case No. CUP 92-3, granting a conditional use permit for the Son Silver West Property which allowed expansion of the Son Silver West legal non-conforming use onto Tract 41 (hereinafter the “1992 CUP”).¹⁸ At the time of

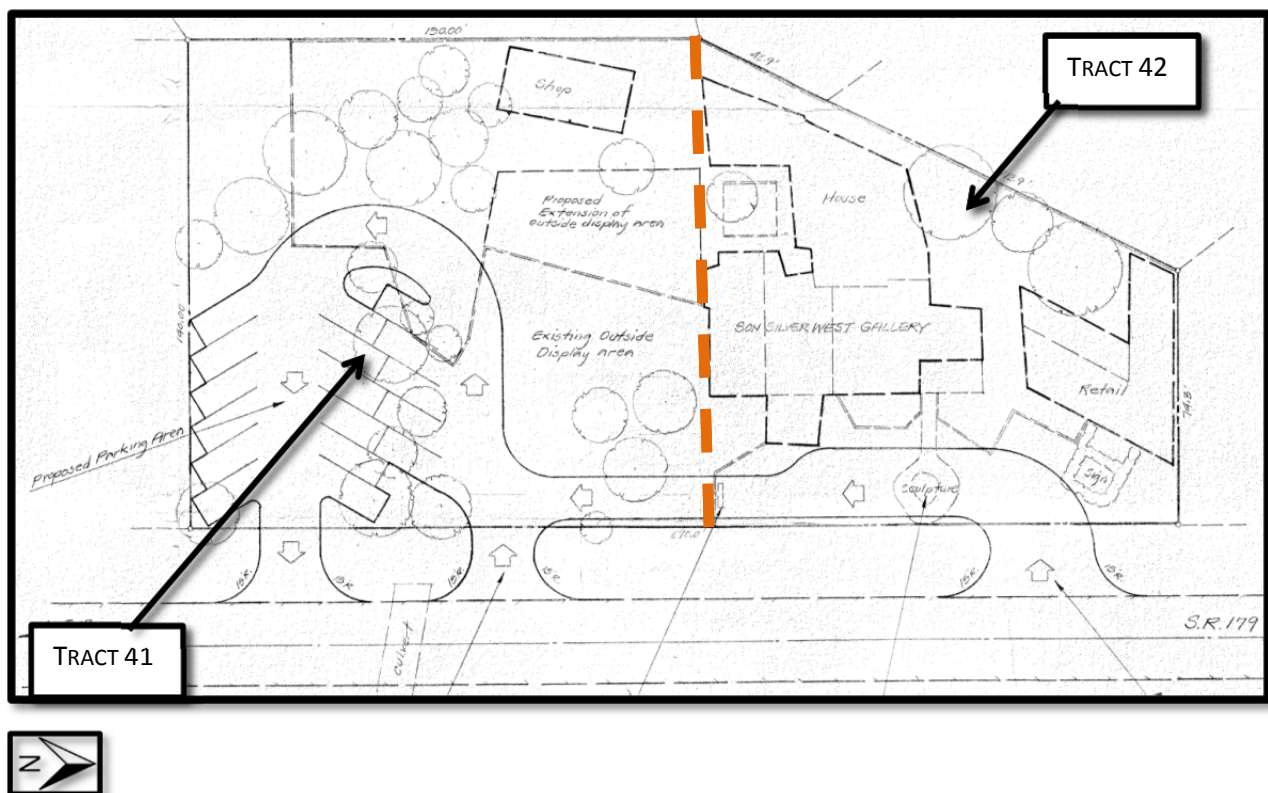
¹⁷ See “Analysis” section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992, page 6, attached to SSW Memorandum as **Exhibit “6”**.

¹⁸ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit “3”**; See also Minutes from the September 15, 1992 Planning and Zoning Commission hearing attached to SSW Memorandum as **Exhibit “8”**; See also Letter from Sedona Associate Planner John O’Brien to Robsons dated September 21, 1992 attaching final conditions of approval for Case No. CUP 92-3, attached to SSW Memorandum as **Exhibit “9”**; See also Site Plan prepared by Shephard-Wesnitzer, Inc. dated April 4, 1992, Job No. 91038, submitted by Robsons to City of Sedona and approved as part of CUP 92-3 as “Alternative Site Plan #2”, attached to SSW Memorandum as **Exhibit “10”**.

approval of the 1992 CUP, Section 204.01 of the Sedona Interim Zoning Ordinance provided for the expansion of non-conforming uses through the administrative approval of a conditional use permit by the Planning & Zoning Commission. The option for obtaining a conditional use permit to expand a legal non-conforming use has since been deleted from the Sedona Land Development Code.

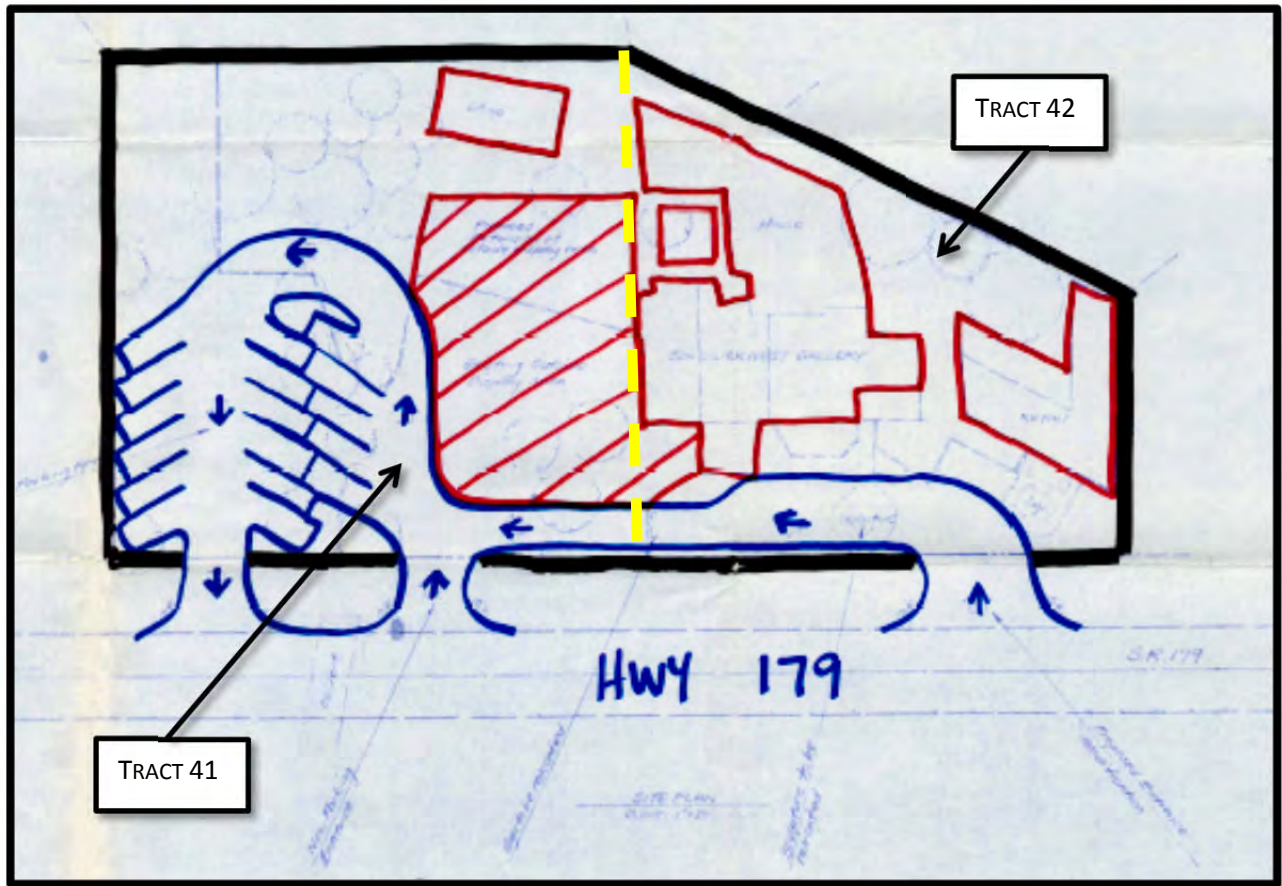
As part of the Robson's 1992 CUP application, a schematic site plan drawn to scale was prepared by Shephard-Wesnitzer, Inc. dated April 4, 1992, Job No. 91038 (the "**1992 Plan**") which showed the following improvements and uses as of April of 1992: (1) the art gallery, enclosed retail, art workshop and residential uses on the Son Silver West Property, (2) the proposed relocation and expansion of the parking area from Tract 42 to Tract 41 and reconfiguration of the on-site traffic circulation, and (3) the outside retail display area to be expanded in the northern area of Tract 41. This 1992 Plan was submitted by the Robsons to the City of Sedona and was approved with a hand-drawn overlay sketch as "**Alternative Site Plan #2**" (shown with red and blue overlay on following page).¹⁹

1992 PLAN LATER ADOPTED AS "ALTERNATIVE SITE PLAN #2" BY PLANNING AND ZONING COMMISSION
***With FJS, PC Annotations Designating Tracts 41 and 42**



¹⁹ See larger size of Site Plan prepared by Shephard-Wesnitzer, Inc. dated April 4, 1992, Job No. 91038, submitted by Robsons to City of Sedona and approved as part of CUP 92-3 as "Alternative Site Plan #2", attached to SSW Memorandum as **Exhibit "10"**.

ALTERNATIVE SITE PLAN #2 APPROVED WITH CUP 92-3 ON SEPTEMBER 15, 1992
*With FJS, PC Annotations Designating Tracts 41 and 42



The location of the additional 5,000 s.f. of outdoor retail display area to be expanded onto Tract 41 is shown on Alternative Site Plan #2 with diagonal red lines. This expanded outdoor retail display area measures approximately 60 feet by 90 feet. The 1992 Plan and the Alternative Site Plan #2 do not identify the locations of the outdoor retail display areas which were then existing on Tract 42. The Robsons steadfastly maintain that virtually all of the outdoor area on Lot 42 was used for retail display, except for the parking area lying between the gallery and SR 179.

The 1992 CUP was approved by the Planning and Zoning Commission subject to certain conditions of approval²⁰, which are at issue in this appeal:

1. Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated

²⁰ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit "3"**; See also Letter from Sedona Associate Planner John O'Brien to Robsons dated September 21, 1992 attaching final conditions of approval for Case No. CUP 92-3, attached to SSW Memorandum as **Exhibit "9"**; See also larger size of this "Alternative Site Plan #2", attached to SSW Memorandum as **Exhibit "10"**.

September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2).

...

6. The outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.

...

9. All other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.

Condition No. 1 to the 1992 CUP limits the uses and physical improvements on the Son Silver West Property to those characterized in both the staff report dated September 15, 1992 (the "1992 Staff Report") and the Alternate Site Plan #2. Unfortunately, the square footages of the buildings and uses measured on the scaled version of Alternate Site Plan #2 do not match the uses and square footages identified in the 1992 Staff Report. A comparison of the uses and square footages identified in the 1992 Staff Report versus the uses and square footages provided in Alternate Site Plan #2 is set forth below:

1992 STAFF REPORT²¹		ALTERNATE SITE PLAN # 2²²	
USE	SQUARE FOOTAGE	USE	SQUARE FOOTAGE
Retail space in enclosed buildings	2,250 s.f.	Retail Son Silver West Gallery	4,328 s.f.
Additional outside retail display area on Tract 41	5,000 s.f.	Outdoor retail display area on Tract 41	5,400 s.f.
Single-family dwelling	1,950 s.f.	House	1,950 s.f. (483 s.f. at southwest corner of House used as Art Studio)
Pottery shop with kiln	1,300 s.f.	--	--
Storage space	590 s.f.	--	--
Workshop	750 s.f.	Shop	740 s.f.
Parking located between gallery and Highway 179	N/A	Parking proposed at south end of Property on Tract 41	N/A

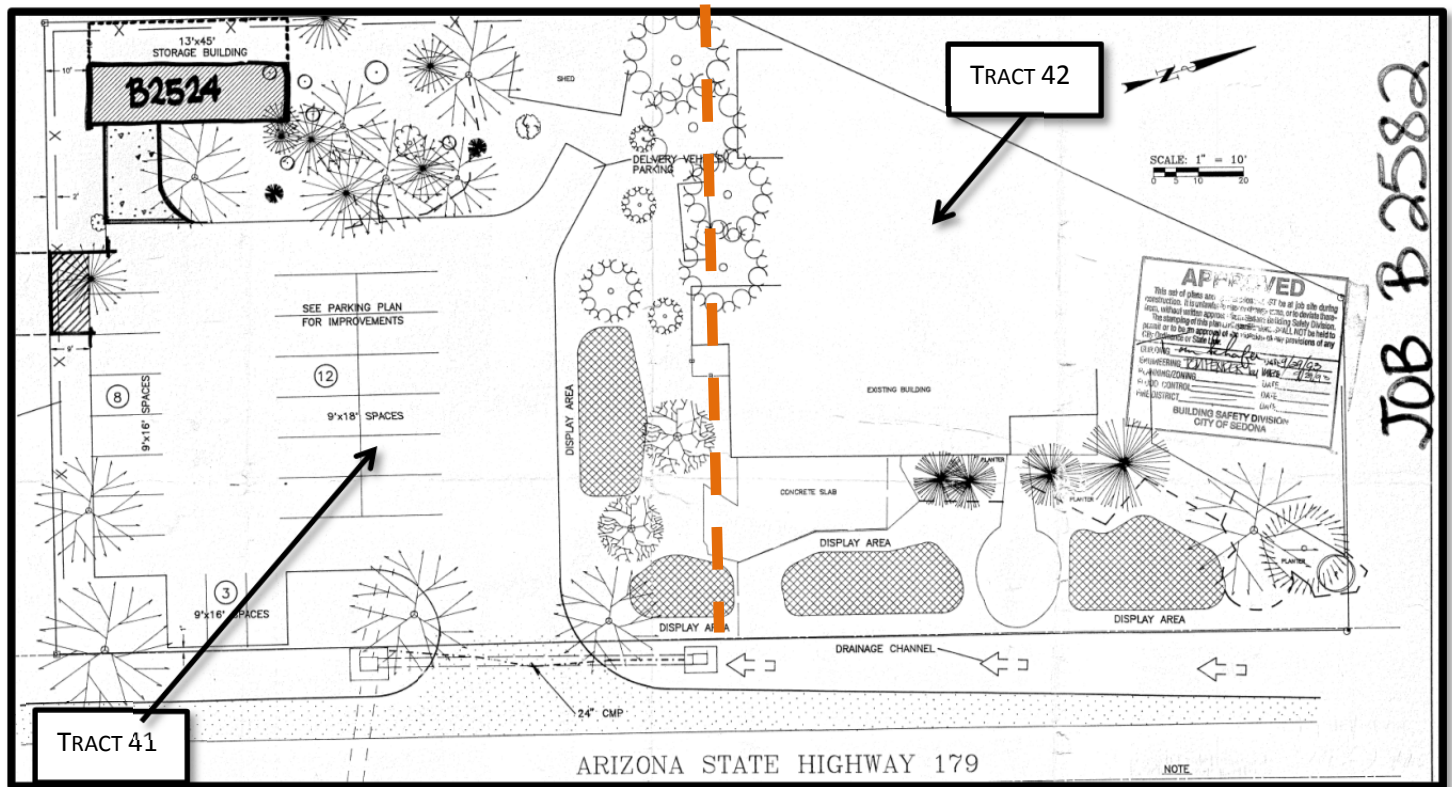
²¹ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached to SSW Memorandum as **Exhibit "3"**

²² See "Alternative Site Plan #2", attached to SSW Memorandum as **Exhibit "10"**.

- K. On September 29, 1993, the former Community Development Director Tom Schafer approved a Site Plan, Highway 179 Paving & Striping Plan, and Parking Plan prepared for the Son Silver West Property by Shephard-Wesnitzer, Inc. dated September 1993, Job No. 91038 (the “1993 Plan”).²³ The 1993 Plan contains a City of Sedona Building Safety Division “Approved” stamp as well as large handwriting referencing “JOB B2582” and “B2524”. The “B2524” number is placed on top of a 13’ x 45’ building located at the southwest corner of Tract 41, evidencing the City’s issuance of a building permit for that structure.

1993 PLAN APPROVED BY FORMER COMMUNITY DEVELOPMENT DIRECTOR SCHAFER

***With FJS, PC Annotations Designating Tracts 41 and 42**



The 1993 Plan approved by Director Schafer shows an approximate 30-foot wide outdoor retail display area lying along the north side of Tract 41 and south of the gallery building that was existing at the time of the CUP approval in 1992. Based upon the approximate 60-foot width of the outdoor display area shown on the prior 1992 Plan and Alternative Site Plan #2, it is obvious that the display area existing along the north side of Tract 41 at the time of the CUP approval was reduced by almost half in order to accommodate the new parking area on Tract 41. Not by coincidence, the 1993 Plan also shows outdoor retail “display

²³ See 1993 Plan attached to SSW Memorandum as **Exhibit “11”**.

areas” within the entire north-south area lying between the existing Tract 42 gallery and retail buildings on the west and the drainage channel abutting Highway 179 on the east. This additional outdoor display area shown on Tract 42 along Highway 179 on the 1993 Plan, formerly occupied by the original parking area of the gallery, was relocated from the 5,000 s.f. outdoor display area approved along the north side of Tract 41 by the CUP. Thus, in 1993, Director Schafer approved these outdoor retail display areas as they currently exist today.

Coconino County Assessor Parcel Map – 1993 Plan Approvals



The buildings and the outdoor retail display areas located interior to Tract 42 are not depicted on the 1993 Plan due to the nature of the plans. The 1993 Plans were submitted for issuance of building permits related to the new parking area on Tract 41, improvements to Highway 179, and the construction of a new building at the southwest corner of Tract 41. Providing a detailed plan of the existing improvements and uses within the interior of Tract 42 was not necessary for the issuance of those permits.

L. As of June 7, 1994, the new parking lot had been constructed on Tract 41.²⁴

M. On June 7, 1994, former Community Development Director Tom Schafer and the Robsons entered into an agreement with regard to the Robson's future compliance with CUP Condition Nos. 4, 6, 8, 9, and 10 as summarized below:

- Condition No. 4 – The Robsons agreed that all required improvements to Hwy. 179 would be commenced no later than April 1, 1995 and completed no later than July 1, 1995.
- Condition No. 6 – The Robsons agreed that earthen berms and screen landscaping would be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994 and October 1, 1994, respectively. A combination of earthen berming, landscaping and rustic fencing was also required in order to satisfy any additional visual screening requirements of all outside display areas as approved by the Director no later than October 1, 1994. (Emphasis added).
- Condition No. 8 – The Robsons agreed that all mercury vapor lighting would be eliminated no later than August 1, 1994.
- Condition No. 9 – The Robsons agreed to install parking lot lighting no later than August 1, 1994. It was agreed that all lighting would be shielded to the satisfaction of the Community Development Department Director no later than August 15, 1994. (Emphasis added).
- Condition No. 10 – The Robsons agreed that the south and east sides of the new parking lot area on Tract 41 would be screened with earthen berms and landscaped to the satisfaction of the Director no later than July 1, 1994. (Emphasis added).

The June 7, 1994 agreement also acknowledged public use of the Son Silver West “newly established parking lot area on the south side of the property [Tract 41] prior to completion of the Hwy. 179 improvements.”²⁵

N. On February 22, 1995, John O'Brien, who at the time was an Associate Planner with the City of Sedona, sent a letter to Bill Robson which provided confirmation that all

²⁴ See Agreement dated June 7, 1994, attached to SSW Memorandum as **Exhibit “12”**.

²⁵ *Id.* at SSW Memorandum **Exhibit “12”**.

required improvements required under the 1992 CUP for the Son Silver West Property had been completed, with the exception of: (1) elimination of the existing mercury vapor lighting [Condition 8], (2) installation of additional parking lot lighting [Condition 9], and (3) construction of the SR 179 improvements [Conditions 4]. Mr. O'Brien requested that the Robsons complete the lighting items as soon as possible and provided notice that the SR 179 improvements would need to be started by April 1, 1995.²⁶

- O. On May 16, 1995, Associate Planner John O'Brien sent a follow-up letter to Bill Robson providing notice that construction of the required SR 179 improvements was required to have been started no later than April 1, 1995 and was to be completed no later than July 1, 1995.** As of May 16, 1995, it did not appear that the Robsons had commenced construction of the SR 179 improvements. Mr. O'Brien stated that the SR 179 improvements were required to be completed by July 1, 1995 or the Robsons would be in violation of the conditions of the June 7, 1994 agreement and the conditions associated with the CUP.²⁷

According to email correspondence between City Planning staff on March 15, 2007, it was noted that the SR 179 improvements required under the CUP included grading and paving to improve drainage and safety. Planner Beth Escobar noted that it appeared that the former SR 179 "requirements were just absorbed into the current ADOT improvement project" which included installation of a median and expansion of SR 179.²⁸ Thus, it appears based upon the correspondence from John O'Brien to the Robsons in 1995 and this March 15, 2007 email that all 12 conditions approved pursuant to the CUP were satisfied.

- P. In or about 1995, the City of Sedona adopted a formal Land Development Code ("LDC")** which no longer allowed the expansion of non-conforming uses by obtaining the Planning and Zoning Commission's approval of a conditional use permit.
- Q. In 1998, Sedona voters ratified the City Council's action adopting an updated Community Plan, removing the Commercial land use designation on the Son Silver West Property and replacing it with a T-14 Transitional land use designation.**

²⁶ See February 22, 1995 letter from Associate Planner John O'Brien to Robsons, attached to SSW Memorandum as **Exhibit "13"**.

²⁷ See May 16, 1995 letter from Associate Planner John O'Brien to Robsons, attached to SSW Memorandum as **Exhibit "14"**.

²⁸ See March 15, 2007 email from Beth Escobar attached to SSW Memorandum as **Exhibit "15"**.

- R. In 2002, Sedona voters ratified the City Council's action adopting an updated Community Plan which removed the Transitional land use designation from the Land Use Plan. The Son Silver West Property was re-designated as Single Family Residential.
- S. On August 23, 2004 and September 4, 2004, Steve O'Brien of ADOT, the Robsons and Sedona Community Development Director John O'Brien reached an agreement whereby a new driveway connecting the Son Silver West parking lot to Highway 179 would be located and paved on Vacant Tract 40 to accommodate a full median break to serve Son Silver West.²⁹ The new driveway and median break would allow circulation of large delivery trucks to the site and would eliminate any backing up of large trucks onto SR 179.
- T. Between 2006 and 2012, Community Development Director John O'Brien exercised his authority to interpret and enforce the LDC and the conditional use permit approved for Son Silver West on a periodic and consistent basis. The exercise of this enforcement authority was apparent in the following correspondence and notices of violation issued by Mr. O'Brien to the Robsons between the years of 2006 through 2012.
1. On January 11, 2006, Director John O'Brien issued a Notice of Violation letter to the Robsons suspending the 1992 CUP due to unlawful addition to a storage building, operation of an information booth for an off-site resort, non-compliant screening, and encroachment of commercial activities and parking on the Arrow Property and Vacant Tract 40.³⁰
 2. On February 24, 2006, Director John O'Brien issued an Amendment to the January 11, 2006 Notice of Violation to the Robsons regarding non-compliant screening along the south property line of Tract 41, demolition work to be performed under demolition permit, the driveway on Vacant Tract 40 being removed and returned to its natural state (despite being agreed upon by ADOT and John in 2004), discontinuing unlawful commercial uses and parking on Vacant Tract 40 and use of the 1,950 s.f. residence.³¹

²⁹ See ADOT Meeting Notes dated August 23, 2004 and Record of Conversation dated September 8, 2004, attached to SSW Memorandum as **Exhibit "16"**.

³⁰ See January 11, 2006 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "17"**.

³¹ See February 24, 2006 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "18"**.

3. On February 28, 2006, a demolition permit was issued by the City to the Robsons to remove an unlawful addition to the southernmost storage building located on Tract 41.³²
4. By March of 2006, the Son Silver West Properties were brought into compliance and the CUP was reinstated.³³
5. On May 2, 2008, Director John O'Brien sent a letter to Rio Robson responding to the Robson's proposal to use Vacant Tract 40 as a temporary staging area for the SR 179 construction project and future plans to develop Vacant Tract 40 as a permanent parking lot for Son Silver West customers. Director O'Brien permitted the use of Vacant Tract 40 as a temporary staging area but prohibited the proposed parking expansion. Director O'Brien provided information on the City's Community Plan update process for purposes of the Robsons applying for a Major Community Plan Amendment and rezoning for Vacant Tract 40.³⁴
6. On May 19, 2011, Director John O'Brien issued a Notice of Violation to Rio Robson regarding the illegal use of Vacant Tract 40 as a parking lot and for outside sales, display and storage of merchandise and equipment associated with the adjacent Son Silver West retail business. The Notice encloses the May 2, 2008 letter in which Mr. O'Brien previously outlined steps that would be necessary to develop the Vacant Tract 40 as permanent parking for Son Silver West (Community Plan Amendment and rezoning). The Notice gave the Robsons until June 24, 2011 to remove all parking on Vacant Tract 40, including all concrete parking stops, and to remove all display items. The Notice states that, should the Robsons fail to remove these items by June 24, 2011, formal code enforcement action would result.³⁵
7. On May 24, 2011, Director John O'Brien issued a follow-up letter to his May 19th Notice of Violation to Rio Robson regarding the requirement to remove illegal paved parking spaces on Vacant Tract 40. Director O'Brien also recommended that the Robsons become involved in the Community Plan Update process for purposes of redesignating the Son

³² See Demolition Permit records, Permit No. B9254-D attached hereto as **Exhibit "H"**.

³³ See Email from Planner Beth Escobar dated March 15, 2007 attached to SSW Memorandum as **Exhibit "15"**.

³⁴ See May 2, 2008 letter from Director O'Brien, attached to SSW Memorandum as **Exhibit "19"**.

³⁵ See May 19, 2011 letter from Director O'Brien, attached to SSW Memorandum as **Exhibit "20"**.

Silver West Property and Vacant Tract 40 for commercial or parking use.³⁶

8. On August 31, 2011, Director John O'Brien issued a Notice of Violation and suspension of the CUP to the Robsons listing violations relating to the following unlawful improvements and/or uses: (1) a coffee shop, a shade structure behind the coffee shop, a roof system attached to a rear yard storage building, a fence along the rear property line, a fence along the front property line, and an open-air roof structure that enclosed a vending machine on the Son Silver West Property, (2) commercial parking and storage on the Vacant Lot 40, and (3) commercial parking and storage on the Arrow Property.³⁷
9. On September 8, 2011, the City of Sedona issued a permit to the Robsons for the existing wrought-iron fence erected within the front yard of the Son Silver West Property abutting Highway 179. The permit/job number assigned to this front fence was B11594. The permit approval form shows a "Zoning Approval Date" of 9/1/2011.³⁸ An email sent by Director O'Brien to staff dated September 8, 2011 confirmed that he approved the issuance of a permit for the wrought-iron fence constructed by the Robsons along SR 179.³⁹
10. On September 12, 2011, Director John O'Brien issued a zoning interpretation to the Robsons finding that Robson would not be allowed to modify CUP 92-3 to introduce new uses, such as a coffee shop, or construct new accessory structures because to do so would be a change of a legal nonconforming use inconsistent with the LDC Article 1204.⁴⁰ The Director advises the Robsons that a Community Plan Amendment and a rezoning to a commercial zoning district would be required in order to operate a coffee shop and construct new accessory structures on the Son Silver West Property.

³⁶ See May 24, 2011 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "21"**.

³⁷ See August 31, 2011 letter from Director O'Brien attached to SSW Memorandum as **Exhibit "22"**.

³⁸ See Permit Approval and Approved Plans for Son Silver West front wrought-iron fence, attached to SSW Memorandum as **Exhibit "23"**.

³⁹ See September 8, 2011 email from Director O'Brien to Brian Pearson attached hereto as **Exhibit "F"**.

⁴⁰ See September 12, 2011 letter from Director O'Brien to the Robsons attached to SSW Memorandum as **Exhibit "24"**.

11. On September 26, 2011, the Robsons appealed the Director's September 12, 2011 interpretation to the Board of Adjustment.⁴¹ Within their appeal, the Robsons challenged the determination by Director O'Brien that the construction of the shade roof and gutter behind the coffee shop was an unlawful structure. The Robsons asserted this structure had been in place for 15 years and was permitted along with the building of a work-repair shop. With regard to the rain gutter system and all-weather clear roofing installed on the west side of the permitted existing building at the southwest corner of Tract 41, the Robsons explained that these improvements were necessary to direct rain water into a gutter system as a precautionary public health and safety measure. The Robsons did not appeal the use of the coffee shop on the Son Silver West Property.
12. On October 4, 2011, Director O'Brien sent an email to Rio Robson notifying Mr. Robson that the Board of Adjustment meeting to hear the Robson's appeal of his decision "to not allow expansion of the Son Silver West Gallery as noted in [the] September 12, 2011 letter" would be held on Friday, December 2, 2011 at 1:00 pm in the Vultee Conference Room at City Hall.⁴² Director O'Brien informed Mr. Robson that he would provide a staff memorandum and an agenda for the Board of Adjustment meeting about 7 to 10 days prior to the hearing. This email supports a finding by the Board of Adjustment that Director O'Brien's subsequent December 21, 2011 decision issued in this Board of Adjustment matter was a decision finding compliance with the existing 1992 CUP and Alternative Site Plan #2.
13. On October 6, 2011, Director John O'Brien sent an email to Rio Robson explaining that an expansion of parking on Vacant Tract 40 and the use of the Arrow Property for office space and employee parking would require a Community Plan amendment and rezoning application.⁴³
14. On November 3, 2011, Rio Robson sent an email to Director O'Brien requesting to "defer" the December 2nd appeal hearing before the Board of Adjustment.⁴⁴

⁴¹ See Robson's appeal narrative to the Board of Adjustment dated September 22, 2011 and City of Sedona Receipt No. 5.015822 dated September 26, 2011 in the amount of \$200 for the Board of Adjustment appeal submitted by the Robsons, attached to SSW Memorandum as **Exhibit "25"**.

⁴² See October 4, 2011 email from Director O'Brien to Rio Robson attached hereto as **Exhibit "G"**.

⁴³ See October 6, 2011 email from Director O'Brien attached to SSW Memorandum as **Exhibit "26"**.

⁴⁴ See November 3, 2011 email from Rio Robson to Director O'Brien attached to SSW Memorandum as **Exhibit "27"**.

15. On November 4, 2011, Director John O'Brian responded to Rio Robsons November 3rd request stating that he would "hold off on the appeal hearing" and that based upon his site inspection on November 2, 2011, it was apparent that the Robsons had discontinued the coffee shop use. He also stated that he had reviewed all permits that the City had on file and could not find a permit for the roof system and shade structure [described in August 31, 2011 notice of violation]. Director O'Brien stated that he would talk with the Chief Building Inspector and would let the Robsons "know if it will be necessary to reschedule . . . [the] appeal hearing with the Board of Adjustment."⁴⁵
16. **On December 21, 2011, Community Development Director John O'Brien emailed Rio Robson providing the following enforcement decision with regard to alleged outstanding violations on the Son Silver West Property and the pending appeal before the Board of Adjustment:**⁴⁶

I have been giving your building permit situation at Son Silver West some thought lately and how we might proceed. Rather than get into some long drawn out enforcement action based on what you might have or might not have constructed at Son Silver West over the years, here is how I would like to proceed:

1. You have already shut down the coffee shop and this was my primary concern. I appreciate you taking care of this issue.
2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building. You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.
3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.

⁴⁵ See November 4, 2011 email from Director O'Brien attached to SSW Memorandum as **Exhibit "27"**.

⁴⁶ See December 21, 2011 decision by Director O'Brien attached to SSW Memorandum as **Exhibit "28"**.

4. By March 1, 2012, I am requesting that you provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

I feel this is a fair compromise to resolve this situation. Please let me know your thoughts.

Thanks.

John O'Brien, Director
Community Development Department

17. **On December 23, 2011, Rio Robson responded by email to Director O'Brien's December 21, 2011 Decision⁴⁷** stating the following:

Dear John,

Sounds like a great plan, I will come by and talk about the site plan after Christmas. Thank you again.

Happy holidays to you and the family.

Rio

- U. **On or about May 9, 2012, Director John O'Brien sent by email to several staff members and provided to future Director Audree Juhlin a memorandum titled "Project Status Information May 2012."⁴⁸** Within the memorandum, Director O'Brien provided updates and information on a number of projects throughout the City of Sedona, including Son Silver West. Notably, Director O'Brien provided no information to staff or Ms. Juhlin regarding any current violations on the Son Silver West Property or current violations relating to the 1992 CUP.

⁴⁷ See December 23, 2011 email from Rio Robson to Director O'Brien attached hereto as **Exhibit "I"**.

⁴⁸ See May 9, 2012 email from Director O'Brien and redacted memorandum titled "Project Status Information May 2012" attached to SSW Memorandum as **Exhibit "29"**.

Instead, Director O'Brien memorialized his prior December 21, 2011 decision by stating:

Rio Robson is supposed to get us a notebook of photographs of the property showing all of the existing improvements. He needs to date these photos and provide them to staff so we know exactly what they have now in place and what is legal non-conforming ... so the next time they building [sic] without permits, we will know what is legal and what is illegal. I have asked for this for several months and Rio has said "he will get to it soon" for at least four months.

- V. **In early summer 2012, Rio Robson submitted to John O'Brien a conceptual site plan and labeled photographs** of the existing uses, structures and parking area on the Son Silver West Property, including the Father Kino Chapel on the Arrow Property.⁴⁹ The photographs submitted by Mr. Robson are labeled and dated March 1, 2012.
- W. **On July 3, 2012, Director John O'Brien retired** after being employed by the City of Sedona for 24 years.
- X. **As a result of and in reliance upon the December 21, 2011 decision by Director John O'Brien finding no use or structural violations of the LDC and 1992 CUP existing on the Son Silver West Property, the Robsons undertook the following actions and substantial investments in their Son Silver West business:**
 - A. The Robsons increased their off-site warehousing and art inventory space from approximately 2,000 s.f. to 8,500 s.f. in order to maintain a constant supply of art objects and goods to the Son Silver West Property for sale. The Robsons are currently in the process of expanding their total warehousing space to approximately 14,000 s.f.
 - B. The Robsons expanded their sources and increased their wholesale purchases of art objects and related inventory items for the Son Silver West Property. The assurance supplied by Director O'Brien's decision that the Son Silver West Property was operating with no violations of the LDC or 1992 CUP caused the Robsons to purchase larger volumes of retail inventory to be stored in the expanded warehouse space and transferred to the Son Silver West Property for sale. For instance, the Robsons purchased approximately \$300,000

⁴⁹ See conceptual site plan and photographs dated March 1, 2012, attached to SSW Memorandum as **Exhibit "30"**.

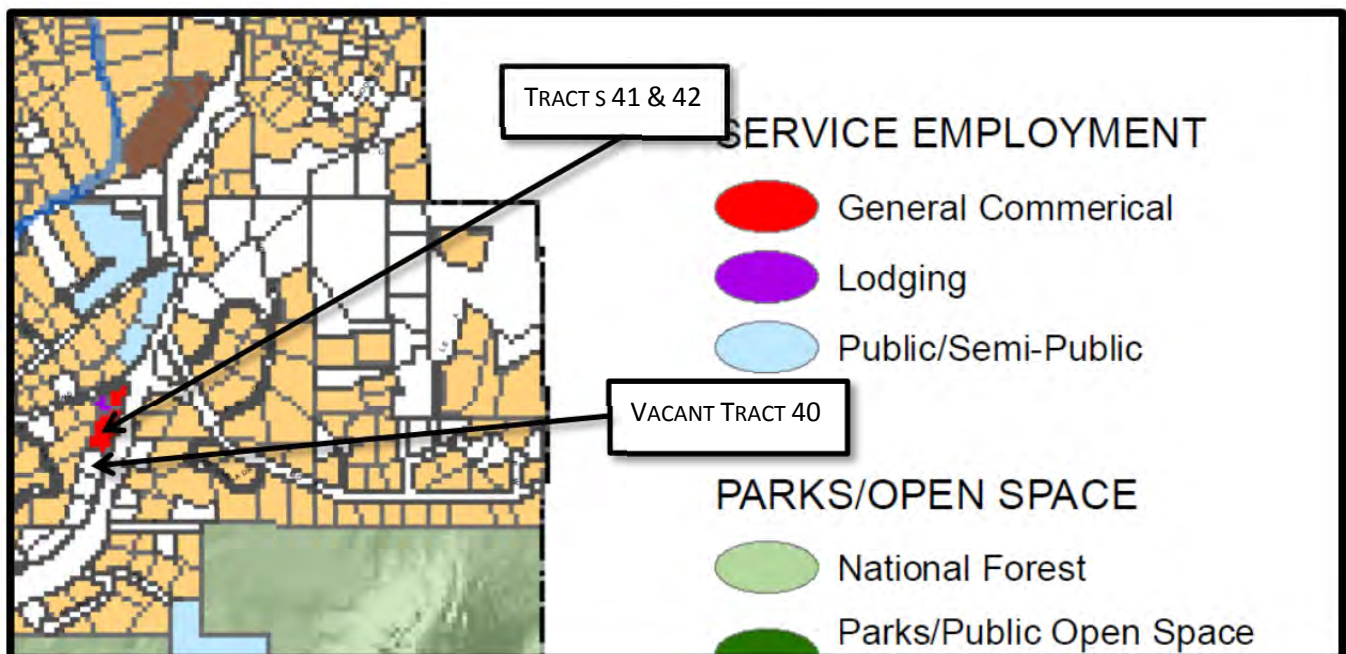
worth of art inventory from Mexico in 2013 and an additional \$500,000 of inventory in 2014.

- C. The Robsons purchased new art manufacturing equipment totaling approximately \$45,000 and spent approximately \$100,000 on computer software and telecommunication equipment for the Son Silver West Property.
- D. As a result of these actions taken by the Robsons in reliance on the December 21, 2011 decision by Director O'Brien, the Robsons realized noticeable increases in annual net revenue starting in 2012 through this year to date.

Y. On March 11, 2014, an updated Sedona Community Plan adopted by the City Council was ratified by voters. As suggested by John O'Brien, Rio Robson played an active role in the Community Plan Update process in 2013 and 2014, including the formation of a Community Focus Area (CFA) for the area along SR 179 surrounding the Son Silver West Property.

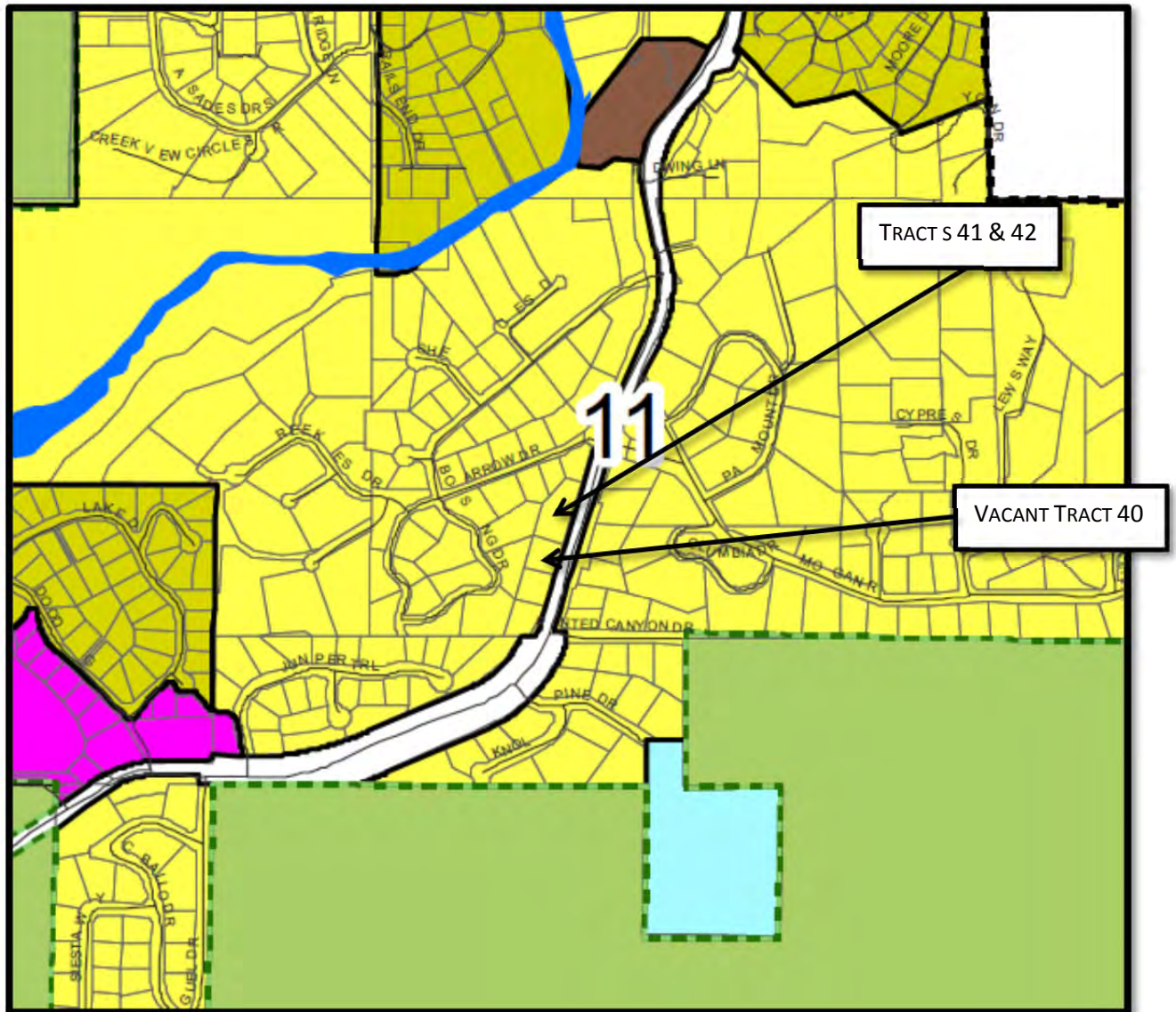
The current 2014 Community Plan designates the Son Silver West Property (Tracts 42 and 41) as General Commercial (red color) on the Existing Land Use Map. Vacant Tract 40 is designated as Vacant Land (white color).

EXISTING LAND USE MAP RATIFIED BY VOTERS ON MARCH 11, 2014



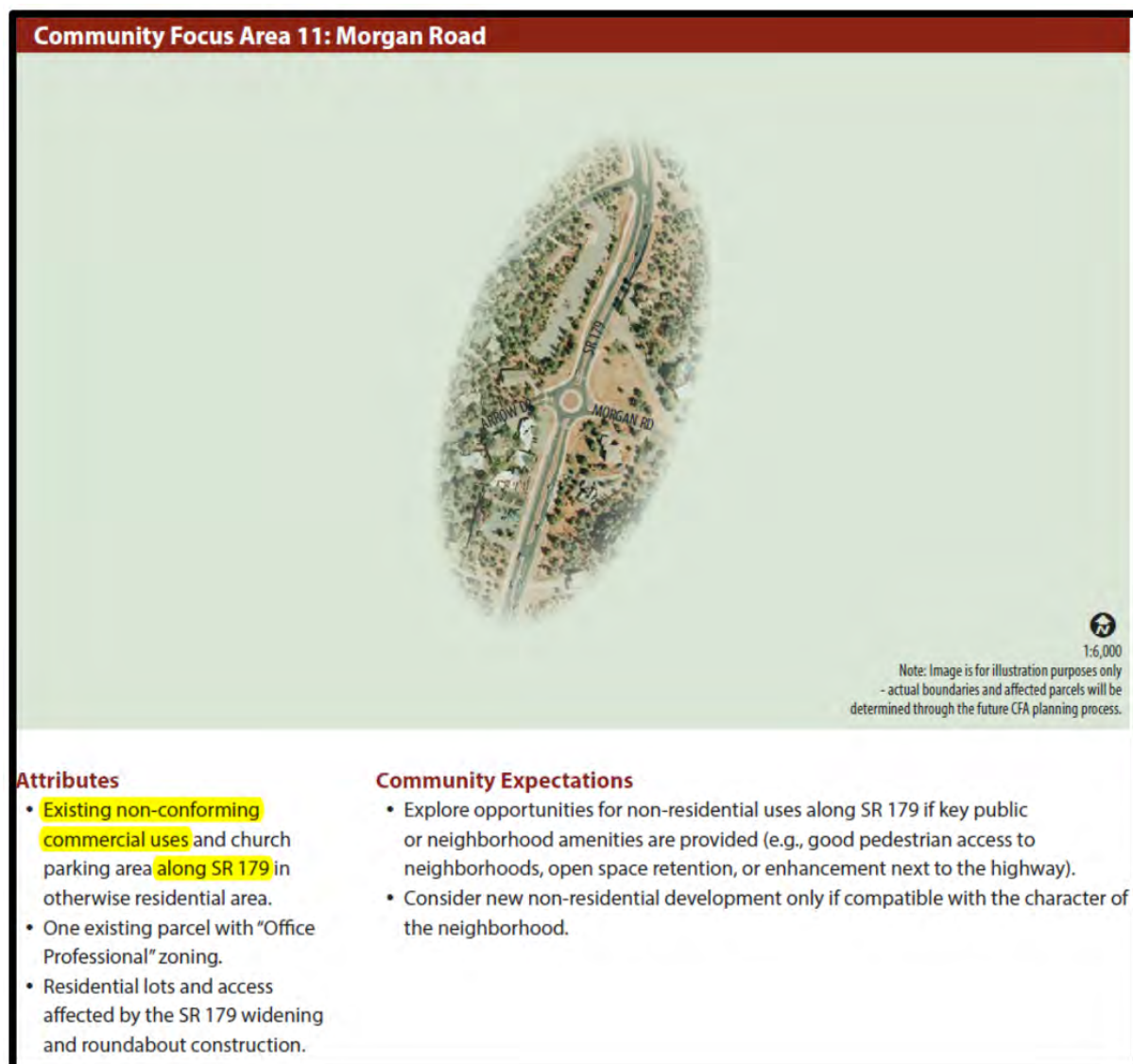
Incredibly, the commercial retail uses existing on Tract 42 since 1960 and expanded on Tract 41 under the 1992 CUP were not identified on the Future Land Use Map with a Commercial land use designation. Instead, the Son Silver West Property and Vacant Tract 40 are designated as Single Family Low Density (0.5 to 2 DU/AC) (yellow color). The number “11” designates the area along SR 179, including the Son Silver West Property and Vacant Tract 40, as being within Morgan Road Community Focus Area 11.

FUTURE LAND USE MAP RATIFIED BY VOTERS ON MARCH 11, 2014



The Land Use Element of the 2014 Community Plan describes the Morgan Road CFA as possessing attributes including commercial non-conforming uses along SR 179, such as Son Silver West, and identifies community expectations for non-residential uses along SR 179. According to

page 34 of the Land Use Element, the Morgan Road CFA is a location where the City will develop a Specific Plan, including any necessary rezoning, for adoption by the City Council. The Specific Plans will be developed with participation from property owners, neighbors, and stakeholders and will strive to achieve the “Community Expectations” for each CFA. According to the Land Use Action Plan on page 55 of the Land Use Element, creation and implementation of a Specific Plan for the Morgan Road CFA will occur approximately 6 to 10 years from now.



- Z. On October 8, 2014, Director Audree Juhlin issued a Notice of Violation letter to the Robsons for an unlawful expansion of a legal non-conforming use onto three nearby single-family residential properties zoned RS-18b: (1) the Vacant Tract 40, (2) the Arrow Property, and (3) the Bowstring Property. The Notice required the immediate cessation of all commercial activities at these 3

residentially zoned properties and provided an option for the Robsons to apply for approval of a Major Community Plan amendment and rezoning for general commercial uses. The October 8, 2014 Notice did not allege any violations on the Son Silver West Property.⁵⁰ At the time, 33 months had expired since Director O'Brien's December 21, 2011 enforcement ruling.

- AA. On May 28, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a Major Community Plan Amendment application to the City of Sedona** requesting that the Future Land Use Plan be amended to show a Planned Area designation for the Son Silver West Property, Vacant Tract 40 and the Arrow Property.
- BB. On June 26, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a rezoning application to the City of Sedona requesting that the Son Silver West Property, Vacant Tract 40 and the Arrow Property be rezoned from the RS-18b district to the Planned Development district** for purposes of: (1) converting a legal non-conforming use on the Son Silver West Property to a legal conforming use, (2) developing additional parking on the Vacant Tract 40 along SR 179, (3) allowing use of the Arrow Property as offices relating to Son Silver West's business, and (4) allowing a coffee and smoothie bar on the Son Silver West Property.
- CC. On July 24, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a revised Major Community Plan Amendment and rezoning application pertaining to the Son Silver West Property and Vacant Tract 40 only.** The revised Major Community Plan Amendment application requested a change in the land use designation for Tracts 40, 41 and 42 from Single Family Low Density to Planned Area. The revised rezoning application requested that the 2 parcels be rezoned from the RS-18b district to the Planned Area district and requested approval to develop a new parking lot on the Vacant Tract 40.
- DD. On August 12, 2015, Attorney Brian Furuya, on behalf of the Robsons, submitted a request to withdraw the Major Community Plan Amendment and rezoning applications pending under Case No. PZ15-00004.**
- EE. On September 8, 2015, Attorneys Francis J. Slavin and Heather Dukes and the Robsons (Rio Robson in person and Bill and Linda Rose Robson by telephone from Wyoming) met with City of Sedona Community Development Director Audree Juhlin, City Manager Justin Clifton and City Attorney Robert Pickels to discuss an "expanded list" of alleged violations of the 1992 CUP and Sedona Land Development Code applicable to the Son Silver West Property, Vacant**

⁵⁰ See October 8, 2014 letter from Director Audree Juhlin attached to SSW Memorandum as **Exhibit "31"**.

Tract 40, the Arrow Property and the Bowstring Property. Many of the alleged violations discussed during this meeting were items that either were in existence in 1988 or were previously approved by: (1) the Planning Commission pursuant to Case No. CUP 92-3, (2) former Community Development Director Tom Schafer with regard to the 1993 Plan approval and building permits issued thereunder, and (3) former Community Development Director John O'Brien's written interpretation and final enforcement decision dated December 21, 2011. During this meeting, Mr. Slavin offered to provide a legal memorandum to the City of Sedona representatives in attendance at that meeting.

FF. On September 22, 2015, Attorneys Francis J. Slavin and Heather Dukes submitted the SSW Memorandum to City Attorney Robert Pickels.⁵¹

GG. On November 10, 2015, during a meeting at City Hall attended by the Robsons and their counsel, Community Development Director Juhlin served the Robsons with two notices of violation dated November 10, 2015 (the "2015 NOVs")⁵² and a memorandum interpretation of former Director O'Brien's December 21, 2011 Decision (the "Director's 2015 Memorandum").

III. ISSUES PRESENTED

Son Silver West submits the following issues on appeal to the Board of Adjustment, arising from the interpretations and enforcement decisions of Community Development Department Director Audree Juhlin in the 2015 NOVs and the Director's 2015 Memorandum dated November 10, 2015.

A. THE DECEMBER 21, 2011 DECISION BY COMMUNITY DEVELOPMENT DIRECTOR O'BRIEN

- 1. Whether Former Community Development Director O'Brien had the Legal Authority to Interpret, Enforce, and Determine Compliance with the 1992 CUP, Alternative Site Plan #2, and subsequent site plan and permit approvals issued by the City to Son Silver West?**
- 2. Whether the December 21, 2011 Decision was an approval issued by the Community Development Director in his official capacity at the City?**

⁵¹ See SSW Memorandum dated September 22, 2015, attached hereto as **Exhibit "A"**.

⁵² See 2015 NOVs and Director's 2015 Memorandum issued by Director Juhlin to Son Silver West and Robsons on November 10, 2015, attached hereto as **Exhibit "C"**.

3. Whether the current buildings, structures and uses on Son Silver West Tracts 41 and 42 are identical to those inspected and approved by Director O'Brien in his December 21, 2011 Decision?
4. Whether the Conceptual Site Plan and Photographs dated March 1, 2012 were submitted by Son Silver West to the Community Development Director in accordance with Director O'Brien's December 21, 2011 Decision?
5. Whether the City of Sedona is estopped from issuing a Notice of Violation to Son Silver West for conditions on Tracts 42 and 41 determined to be in compliance by Director O'Brien in his December 21, 2011 Decision and subsequently recognized as compliant by Community Development Department staff and Directors for almost 4 years thereafter?

B. APPEAL OF CODE VIOLATIONS LISTED IN NOVEMBER 10, 2015 NOTICE

1. **CORRECTIVE ACTION A.5:** Whether a permitted shed located at 61 Arrow Drive may be used as a private religious and contemplative space accessory to a single-family residence?
2. **CORRECTION ACTION C.1:** Whether the Community Development Director erred in issuing a notice of violation to the owner of 1535 SR 179 for unlawful overflow parking by customers and third parties after owner took necessary steps to post the vacant lot with "No Parking" signs?
3. **CORRECTIVE ACTION C.2:** Whether the Community Development Director erred in issuing a Notice of Violation to the owner of 1535 SR 179 requiring that the owner cease and desist all use of the vacant lot for commercial purposes when the City of Sedona Community Development Department previously approved the relocation and construction of a commercial driveway on 1535 SR 179 to allow ingress and egress traffic to travel to and from Son Silver West Tracts 42 and 41 and the SR 179?
4. **CORRECTIVE ACTION D.1:** Whether the existing outdoor retail display areas on Son Silver West Tracts 42 and 41 are permitted as a result of: (1) the legal non-conforming outdoor retail display areas historically located on Tract 42, (2) the 1992 CUP and Alternative Site Plan # 2 approving the expansion of an additional 5,000 square feet of outdoor retail display area on Tract 41, and (3) the 1993 Site Plan Approval which allowed the transfer of some of the 5,000 s.f.

of outdoor retail display approved under the 1992 CUP from Tract 41 to the former parking area along the frontage of Tract 42?

5. **CORRECTIVE ACTION D.2:** Whether the Son Silver West retail space in enclosed buildings is permitted up to approximately 4,328 s.f. as depicted in the survey map prepared by Shephard Wesnitzer, Inc. and approved by the Planning and Zoning Commission as part of the 1992 CUP Condition No. 1 as “Alternative Site Plan #2”?
6. **CORRECTIVE ACTION D.2:** Whether the southernmost building on Tract 41, referred to as “Building A” by Director Juhlin in the 2015 NOV, was approved as a storage shed to be used in connection with the existing Son Silver West commercial operations?
7. **CORRECTIVE ACTION D.2:** Whether the northernmost building on Tract 41, referred to as “Building B” by Director Juhlin in the 2015 NOV, was approved as an art workshop to be used in connection with the existing Son Silver West commercial operations?
8. **CORRECTIVE ACTION D.3:** Whether the single-family residence depicted on Alternative Site Plan #2 as “House” was approved as an administrative office and employee lounge by Director O’Brien’s December 21, 2011 Decision?
9. **CORRECTIVE ACTION D.4:** Whether the existing wrought-iron fence lying along the frontage of Tract 42 was approved by Director O’Brien and issued a fence permit in accordance with Condition 6 to the 1992 CUP?
10. **CORRECTIVE ACTION D.5:** Whether the existing light fixtures on Tracts 42 and 41 were approved by Director O’Brien in accordance with Condition 9 to the 1992 CUP?
11. **CORRECTIVE ACTION D.6:** Whether the existing shade structures on Tracts 42 and 41 were approved by the December 21, 2011 Decision by Director O’Brien?
12. **CORRECTIVE ACTION D.6:** Whether the 1992 CUP approval, Conditions of Approval, or Alternative Site Plan #2 limit the square footage of shade structures erected in outdoor retail display areas on the Son Silver West Property?

13. **CORRECTIVE ACTION D.7: Whether the existing 6-foot tall solid wood fence and the 6-foot tall masonry wall lying along the west lot line of Son Silver West Tract 41 and 42 require the issuance of a wall permit under the City of Sedona Building Code?**

C. CHILIES

1. **Whether the preparation, roasting, display and vending of chilies on the Son Silver West Property are permitted as a legal non-conforming use?**

D. BUSINESS LICENSE

1. **Whether revocation of Son Silver West's Business License under Section 5.05.040(A) of the Sedona City Code is a lawful method for enforcing the Sedona Land Development Code?**

E. UNLAWFUL REVOCATION OF 1992 CUP FOR VIOLATIONS ON PROPERTIES SEPARATE AND APART FROM SON SILVER WEST PROPERTY GOVERNED BY 1992 CUP

1. **Whether a conditional use permit approval issued for Son Silver West Tracts 42 and 41 may be revoked as a result of alleged violations of the Sedona Land Development Code on Tracts 40, 45 and 49, when Tracts 40, 45 and 49 were not a part of the conditional use permit approval?**

F. VESTED RIGHTS OF SON SILVER WEST

1. **Whether Director Juhlin erred by making the determination in the 2015 NOV and Director's 2015 Memorandum that documentation submitted by Son Silver West to Director Juhlin in the September 22, 2015 Memorandum and records on file at the City of Sedona do not provide sufficient evidence of prior City approvals which would allow certain existing conditions on the Son Silver West Property?**
2. **Whether the existing uses and structures on the Son Silver West Property, which are being challenged by Director Juhlin as unlawful, are vested as a matter of law?**

IV. JURISDICTION OF BOARD OF ADJUSTMENT

The Sedona Board of Adjustment has jurisdiction to hear this appeal of the Community Development Director Juhlin's erroneous interpretation and enforcement of the City of Sedona Land Development Code, Building Code and the 1992 CUP. The

jurisdiction of the Board of Adjustment to hear appeals of this nature has been established by statute pursuant to the following sections of Ariz. R. Stat. § 9-462.06.

C. **A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator**, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

...

D. **Appeals to the board of adjustment may be taken by persons aggrieved** or by any officer, department, board or bureau of the municipality affected **by a decision of the zoning administrator**, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds of the appeal.

...

G. **A board of adjustment shall:**

1. **Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance** adopted pursuant to this article.

The Sedona Community Development Director performs the duties of the Zoning Administrator pursuant to Ariz. R. Stat. § 9-462.05. See Section 306.B of the Sedona LDC. As the Zoning Administrator, decisions by the Community Development Director regarding an interpretation of the Sedona Land Development Code may be appealed to the Board of Adjustment. See Section 304.01.B of the Sedona LDC. Thus, the interpretations and enforcement decisions made by Director Juhlin, as Zoning Administrator, in the 2015 NOV and the Director's 2015 Memorandum, may be appealed to the Board of Adjustment by Son Silver West and the Robsons as aggrieved persons.

V. STAY OF ALL PROCEEDINGS IN THE MATTER APPEALED FROM

As required by Ariz. R. Stat. § 9-462.06(E), the 30-day time period to comply with the 2015 NOV's as well as the City's related inspections and enforcement proceedings are stayed by Son Silver West's and the Robson's appeal to the Board of Adjustment. Ariz. R. Stat. § 9-462.06(E) states as follows:

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. . . .

In this case, none of the alleged violations would cause imminent peril to life or property. The 2015 NOVs arise from the alleged expansion of commercial uses to residential parcels which were not included within Son Silver West's legal non-conforming use designation and the amount of square footage allowed for certain uses on the Son Silver West property. The City's 2015 NOV citing to the failure of Son Silver West to obtain approvals from the Coconino County Health Department to sell roasted chilies purports to raise a public health, welfare and safety concern in the event it is determined that Health Department approval is necessary. Yet, at the same time, it cannot be proven that this public health, welfare and safety concern rises to the level of imminent peril to life or property inasmuch as the Robsons have been selling roasted chilies for several decades. Thus, all inspections and enforcement proceedings relating to the 2015 NOVs or the Director's 2015 Memorandum are stayed until the Board of Adjustment hears and issues a final decision on this appeal.

VI. ARGUMENT

Son Silver West and the Robsons submit this appeal to the Board of Adjustment, requesting a decision to reverse the erroneous interpretations and decisions of the Community Development Director in the 2015 NOVs and the Director's 2015 Memorandum, for the reasons presented below.

A. THE DECEMBER 21, 2011 DECISION BY COMMUNITY DEVELOPMENT DIRECTOR O'BRIEN

On December 21, 2011, former Director John O'Brien issued a formal decision in his official capacity as Director of the Community Development Department and Zoning Administrator finding the Son Silver West Property (Tracts 42 and 41) to be in compliance with the 1992 CUP. The December 21, 2011 Decision was issued in direct response to a pending, formal appeal before the Sedona Board of Adjustment relating to shade structures on the property. The December 21, 2011 Decision read as follows:

Hi Rose and Rio,

I have been giving your building permit situation at Son Silver West some thought lately and how we might proceed. Rather than get into some long drawn out enforcement action based on what you might have or might not have constructed at Son Silver West over the years, here is how I would like to proceed:

1. You have already shut down the coffee shop and this was my primary concern. I appreciate you taking care of this issue.
2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building.

You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.

3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.

4. By March 1, 2012, I am requesting that you provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

I feel this is a fair compromise to resolve this situation. Please let me know your thoughts.

Thanks.

John O' Brien, Director
Community Development Department

As a result of this Decision, the appeal was never rescheduled to be heard by the Board of Adjustment. The City never

- 1. Community Development Director O'Brien had the Legal Authority as Zoning Administrator to Interpret, Enforce, and Determine Compliance with the 1992 CUP, Alternative Site Plan #2, and subsequent site plan and permit approvals issued by the City to Son Silver West.**

In the her 2015 Memorandum, Director Juhlin issued an interpretation of the Community Development Director's powers and authority and made the following decision regarding the authority of former Director O'Brien to issue his December 21, 2011 Decision.

Land use on this site is governed by a regulatory conditional use permit (CUP). Former Director O'Brien had no authority to conditionally approve

changes that directly affect the approved 1992 CUP, through unilateral administrative action. The Land Development Code (LDC), Subsection 402.12 (Conditional Use Permit – Validity and Revisions) states, “Any proposed revisions or changes to an approved conditional use permit application shall be submitted in the same manner and subject to the same approval process as the original review.” **Because Son Silver West has made changes deviating from the 1992 CUP, these changes are subject to review and consideration as prescribed in Section 402 (Conditional Uses). This section of the LDC does not provide for administrative consideration or approvals at a staff level. Therefore, former Director O’Brien did not have the authority to substitute an administrative action for the regulatory requirements prescribed in the LDC relating to modification of a CUP and unilaterally approve changes to the CUP.**

Emphasis added. Director Juhlin again affirmed her interpretation that former Director O’Brien lacked any authority to issue the December 21, 2011 decision by stating that, “based on the regulatory process outlined in the Land Development Code, former Director O’Brien did not have the legal authority to approve any modifications to this CUP.”

While there is no disagreement regarding the required process to modify a CUP under Section 402 of the LDC, Director Juhlin glosses over a key step in the interpretation and enforcement process: Whether Son Silver West is in compliance with the existing CUP? If a Director exercises his enforcement powers as the Zoning Administrator and makes the determination that a property is in compliance with its existing CUP, there is no need to seek the Planning Commission’s approval to modify the CUP.

In this case, Director O’Brien exercised his enforcement authority prescribed by state statute and the Sedona Land Development Code. A Zoning Administrator “is charged with the responsibility for enforcement of the zoning ordinance.” See Ariz. R. Stat. § 9-462.05(C). The Sedona Land Development Code assigns the Zoning Administrator’s duties to the Community Development Department Director. See § 306.B of the Sedona LDC. As part of his enforcement authority, the Director is responsible for notifying a property owner of their failure to comply with certain conditions of approval for a CUP, the reasons for the suspension and the time period by which the property owner must comply with the conditions. See § 402.10.E(1) of the Sedona LDC. For a more detailed analysis of the powers and authority delegated to the Sedona Community Development Director by state statute and prescribed by the Sedona LDC, please see Section III of the September 22, 2015 legal memorandum attached hereto as **Exhibit “A”**.

As part of the pending 2011 enforcement action against Son Silver West arising under the 1992 CUP, former Director O’Brien relied upon his long-time institutional knowledge of the Son Silver West Property and 1992 CUP, conducted a site inspection of the Son Silver West Property with Rio Robson,⁵³ researched the City of Sedona’s site plan

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and permit approval records on file for the Property, and spoke with City staff who would have had knowledge relevant to his determination. Based upon this intimate knowledge of the property and its history, as well as his inspection and research, Director O'Brien determined that the Son Silver West Property was in compliance with the 1992 CUP. Director O'Brien makes no statement regarding a modification or change to the 1992 CUP requirements in his December 21, 2011 decision. Thus, there would have been no requirement for Son Silver West to modify its CUP through the typical Planning Commission amendment process set forth in Section 402 of the LDC.

By making the recent interpretation that Son Silver West is not in compliance with the 1992 CUP, Director Juhlin has merely made a decision that differs from the decision of Former Director O'Brien. A different interpretation by Director Juhlin does not have the legal effect of overruling former Director O'Brien's December 21, 2011 Decision .

In a nutshell, the City has taken the position that former Director O'Brien committed an ultra vires act simply because the new Community Development Director does not agree with Mr. O'Brien's December 21, 2011 Decision. An ultra vires act is one that is "unauthorized" or "beyond the scope of power allowed or granted by a corporate charter or by law." Black's Law Dictionary (10th ed. 2014). With regard to a municipality, the exercise of zoning power must be founded on the state legislature's delegation to local governmental units, and "in the absence of such a grant, such exercise is ultra vires and void." *Bella Vista Ranches, Inc. v. City of Sierra Vista*, 126 Ariz. 142, 144, 613 P.2d 302, 304 (App.1980). "The doctrine of ultra vires, when invoked, should not be allowed where it would not advance justice, but, on the contrary, would accomplish a legal wrong." *Higgins v. Arizona Sav and Loan Ass'n*, 85 Ariz. 6, 10, 330 P.2d 504, 507 (1958) (citing *Leon v. Citizen's Building & Loan Ass'n*, 14 Ariz. 294, 127 P. 721, 722 (1912)). Furthermore, public officials are "presumed to have done their duty" and their acts "are presumed to be correct and legal in absence of clear and convincing evidence to the contrary." Emphasis added. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 193, 181 P.3d 219, 240 (App.2008) (citing *Verdugo v. Indus. Comm'n*, 108 Ariz. 44, 48, 492 P.2d 705, 709 (1972)).

In *Bella Vista Ranches, Inc. v. City of Sierra Vista*, 126 Ariz. at 143, 613 P.2d at 303, the Arizona Court of Appeals determined that Sierra Vista had no authority to regulate subdivisions prior to the passage of Ariz. R. Stat. §§ 9-463 and 9-463.04. An owner of real property in Sierra Vista challenged the City's enforcement of its subdivision regulations which were adopted in 1966 – prior to the state legislature's passage of the first subdivision enabling statutes, Ariz. R. Stat. 9-463 and 9-463.04, in 1974. *Id.* The Court of Appeals found that, because the legislature had delegated no comprehensive regulatory authority to cities and towns over subdividing at the time Sierra Vista adopted its subdivision regulations, Sierra Vista's exercise of the zoning power to require approval of subdivision plats was ultra vires and void. *Id.* at 143-144, 613 P.2d at 303-304.

Contrary to Sierra Vista's attempt to regulate subdivisions within its territorial limits without being delegated this statutory authority in *Bella Vista Ranches, Inc. v. City of Sierra Vista*, Director O'Brien's December 21, 2011 enforcement ruling was an authorized enforcement act under Ariz. R. Stat. § 9-462.05 and Section 306 of the Sedona LDC. Ariz. R. Stat. § 9-462.05 charges the zoning administrator with the responsibility of enforcing the zoning ordinance - a responsibility that is delegated to the Community Development Director under the Sedona LDC. The City of Sedona may not limit or qualify such authorization in an attempt to vacate an enforcement decision by the Director. As shown below in Section IV.A.2 of this narrative, the December 21, 2011 decision was the culmination of the Director's prior interpretation and enforcement decisions issued to the Robsons starting in 2006 through 2011, and was a final decision obviating the need to reschedule a Board of Adjustment hearing for purposes of deciding the Robson's pending appeal of the Director's September 12, 2011 interpretation. In addition, the fact that O'Brien intended that his decision serve as a baseline for future review of potential expanded uses and structures on the Son Silver West Property also supports a finding that the decision was authorized, final and enforceable.

Director John O'Brien's December 21, 2011 decision was not appealed by an aggrieved person to the Board of Adjustment within 15 days, as required by Sedona LDC § 404.10(A). Therefore, in the event an aggrieved person were to attempt to challenge Director O'Brien's decision in Superior Court in the future, the Superior Court would lack jurisdiction to hear and decide the appeal due to the person's failure to exhaust administrative remedies.

Furthermore, the City's failure to take any action to challenge Director O'Brien's decision for almost 4 years from December 21, 2011 until September 2015 is persuasive that the City both recognized and ratified Director O'Brien's decision as being an authorized and final decision. When current Director Juhlin issued a notice of violation to the Robsons on October 8, 2014, the notice alleged no violations pertaining to the use or existing structures on the Son Silver West Property which is consistent with Director O'Brien's December 21, 2011 decision.⁵⁴ Instead, the October 8, 2014 notice alleged violations on Vacant Tract 40, the Arrow Property and the Bowstring Property. It was not until after the Robsons withdrew their Major Community Plan and rezoning applications that the City began revisiting violations that had been resolved by Director O'Brien's prior enforcement decision. Thus, it appears that, in the 45 months preceding our September 8, 2015 meeting, the City was continuing to uphold and enforce the December 21, 2011 decision by Director O'Brien as an authorized act of the Sedona Community Development Director. To disregard that enforcement decision upon which the Robsons have relied for 45 months as *ultra vires*, or unauthorized, "would not advance justice, but, on the contrary, would accomplish a legal wrong." See *Higgins*, *supra*. Moreover, the City of Sedona cannot provide clear and convincing evidence that would overcome the presumption that John O'Brien performed his enforcement duties as the Director of Community

⁵⁴ See Notice of Violation dated October 8, 2014 attached hereto as **Exhibit "31"**.

Development when issuing his December 21, 2011 decision and that such decision was correct and legal.

Therefore, we petition the Board of Adjustment to reverse Director Juhlin's interpretation and decision and find that Director O'Brien had authority to issue the December 21, 2011 Decision determining the Son Silver West Property to be in compliance with the 1992 CUP.

2. The December 21, 2011 Decision was issued by the Community Development Director acting in his official capacity as Zoning Administrator.

In the her 2015 Memorandum, Director Juhlin provides the following decision finding that the December 21, 2011 Decision by former Director John O'Brien was not a "formal approval."

The City's position is that Director O'Brien never gave any formal approval; and regardless, would not have had the authority to do so.

This decision is again restated by Director Juhlin in the 2015 NOV:

While we are aware of certain limited communications discussing the site conditions, staff's records reflect that no formal approval in conformance with the Sedona Land Development Code or Sedona City Code has been granted. Staff believes that while the documentation submitted by your legal counsel provides a detailed overview of the history of the property, the information presented does not offer satisfactory proof that any formal approvals exist allowing the expansion of the site beyond what was approved in the 1992 CUP.

Son Silver West appeals this decision of Director Juhlin. There is no requirement or standard set forth in the Sedona Land Development Code or the 1992 CUP which requires a decision of the Zoning Administrator to be in a certain form or substance in order to be effective. The December 21, 2011 Decision was a written approval issued to the Robsons with John O'Brien's electronic signature and his official capacity as Director of the Community Development Department added after his name.

We would also point to the history of communications between John O'Brien and the Robsons as evidence which would support a finding that Director O'Brien's December 21, 2011 Decision was an official approval determining Son Silver West to be in compliance with the 1992 CUP. Beginning in approximately 1995 through his retirement in July 2012, John O'Brien, first as an Associate Planner and later as the Community Development Director, consistently and periodically exercised his power to enforce the provisions of the Sedona LDC and the 1992 CUP issued to the Son Silver West Property.

As described in greater detail in the Statement of Facts set forth in the September 22, 2015 memorandum attached hereto as **Exhibit “A”**, Mr. O’Brien took several actions with regard to Son Silver West leading up to his December 21, 2011 decision.

As an Associate Planner at the City, in 1995, Mr. O’Brien sent letters to the Robsons enforcing both the conditions of approval for CUP 92-3 and the requisite time periods for completion of those conditions.⁵⁵

Then, on January 11, 2006 and February 24, 2006, Mr. O’Brien, as the Director of the Community Development Department, issued to the Robsons a notice of violation and an amended notice of violation, respectively.⁵⁶ Within these notices, Director O’Brien provided notice to the Robsons that their CUP was suspended until the listed violations were either corrected or discontinued. By March of 2006, the Son Silver West Properties were brought into compliance and the CUP was reinstated.⁵⁷

On May 2, 2008, Director O’Brien sent a letter to Rio Robson interpreting the Sedona LDC to allow the temporary use of Vacant Tract 40 as a staging area for the SR 179 construction project. In response to the Robson’s inquiry regarding development of Vacant Tract 40 as a permanent parking lot for Son Silver West customers, Director O’Brien enforced the LDC prohibiting such use unless the Robsons applied for and obtained City Council approval of a Community Plan amendment and rezoning for Vacant Tract 40.⁵⁸

Approximately 3 years later, on May 19 and May 24, 2011, Director O’Brien exercised his enforcement authority by issuing a notice of violation and follow-up letter to Rio Robson requiring removal of all parking and outdoor display and storage uses being conducted on Vacant Lot 40 in violation of the LDC.⁵⁹ These May 2011 letters were followed by a subsequent notice of violation and suspension of the CUP dated August 31, 2011. The August 31, 2011 notice was issued by Director O’Brien for an unlawful coffee shop use and the alleged unlawful erection of: (1) a shade structure behind the coffee shop, (2) a roof system attached to a rear yard storage building, (3) an open-air roof system enclosing a vending machine, and (4) a fence along the front property line of the Son

⁵⁵ See Letter from John O’Brien to Robsons dated February 22, 1995 attached hereto as **Exhibit “13”**; See also Letter from John O’Brien to Robsons dated May 16, 1995 attached hereto as **Exhibit “14”**.

⁵⁶ See Letters from John O’Brien to Robsons dated January 11, 2006 and February 24, 2006 attached hereto as **Exhibits 17” and “18”**, respectively.

⁵⁷ See Email from Planner Beth Escobar to City staff dated March 15, 2007 attached hereto as **Exhibit “15”**.

⁵⁸ See Letter from John O’Brien to Rio Robson dated May 2, 2008 attached hereto as **Exhibit “19”**.

⁵⁹ See Letters from Director O’Brien dated May 19, 2011 and May 24, 2011 attached hereto as **Exhibit “20” and “21”** respectively.

Silver West Property. The August 31, 2011 notice also cited parking and storage violations on Vacant Tract 40 and the Arrow Property.⁶⁰

On September 12, 2011, Director O'Brien issued to the Robsons an official interpretation of the LDC finding that the Robson's would not be allowed to modify their CUP to introduce new uses, such as a coffee shop, or to construct new accessory structures on the Son Silver West Property because to do so would constitute a change to a legal non-conforming use inconsistent with LDC Article 1204. Director O'Brien advised the Robsons to apply for City Council approval of a Community Plan amendment and rezoning in order to operate a coffee shop or erect new structures on the Son Silver West Property.⁶¹ On September 26, 2011, this interpretation was appealed by the Robsons to the Board of Adjustment challenging the Director's decision that new structures had been erected.⁶²

On October 6, 2011, Director O'Brien sent a separate interpretation letter to the Robsons finding that an expansion of parking on Vacant Tract 40 and the use of the Arrow Property for office space and employee parking would require a Community Plan amendment and rezoning application.⁶³

On November 3, 2011, Rio Robson emailed a request to John O'Brien to defer the Board of Adjustment hearing.⁶⁴ After receiving the Robson's November 3, 2011 email request, Director O'Brien sent an email response on November 4, 2011 stating that he would "hold off on the appeal hearing" and would notify the Robsons, after meeting with Sedona's Chief Building Inspector, whether it would be necessary to reschedule the appeal hearing before the Board. Director O'Brien also confirmed that he made a site inspection of the Son Silver West Property on November 2, 2011 and verified that the coffee shop use had been discontinued.⁶⁵

On December 21, 2011, Director O'Brien sent an email to Rio Robson providing his final decision regarding the enforcement proceedings that had commenced on August 31, 2011 as well as the September 12, 2011 formal interpretation that was appealed by the Robsons to the Board of Adjustment.⁶⁶ In his decision, Director O'Brien acknowledged the discontinuance of the coffee shop use. He also expressed his inability

⁶⁰ See Letter from Director O'Brien dated August 31, 2011 attached hereto as **Exhibit "22"**.

⁶¹ See Letter from Director O'Brien dated September 12, 2011 attached hereto as **Exhibit "24"**.

⁶² See September 26, 2011 appeal from Robsons to Board of Adjustment attached hereto as **Exhibit "25"**.

⁶³ See email from Director O'Brien dated October 6, 2011 attached hereto as **Exhibit "26"**.

⁶⁴ See email from Rio Robson to Director O'Brien dated November 3, 2011 attached hereto as **Exhibit "27"**.

⁶⁵ See email from Director O'Brien dated November 4, 2011 attached hereto as **Exhibit "27"**.

⁶⁶ See Director O'Brien's December 21, 2011 decision attached hereto as **Exhibit "28"**.

to locate City or County building permits or approvals for the shade structure and roof system which the Robsons claimed were replacements of similar structures. Due to the lack of documentation and the possibility that these structures could have been constructed before Sedona's incorporation in 1988, Director O'Brien made the decision to allow the structures to remain as constructed. In requiring the Robsons to submit a site plan and photographs of the Son Silver West Property showing existing buildings, their use and parking, Director O'Brien made the following enforcement decision:

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

When analyzing the language used by Director O'Brien in his December 21, 2011 enforcement ruling in the context of the preceding history of enforcement decisions as well as the Robson's appeal pending before the Board of Adjustment, it is clear that Director O'Brien's decision was an authorized act of enforcement by Sedona's Zoning Administrator under Ariz. R. Stat. § 9-462.05 and Section 306 of the Sedona LDC and that he intended his decision to be a formal and final decision by which the City and the Robsons could rely upon in the future.

Prior to retiring, in May of 2012, Director O'Brien sent an email to several staff members and provided to future Director Audree Juhlin a memorandum titled "Project Status Information May 2012."⁶⁷ Within the memorandum, Director O'Brien provided an update and information regarding Son Silver West. Notably, Director O'Brien provided no information to staff or Ms. Juhlin regarding any current violations on the Son Silver West Property or current violations relating to the 1992 CUP. Instead, Director O'Brien memorialized his prior December 21, 2011 decision by stating:

Rio Robson is supposed to get us a notebook of photographs of the property showing all of the existing improvements. He needs to date these photos and provide them to staff so we know exactly what they have now in place and what is legal non-conforming ... so the next time they building [sic] without permits, we will know what is legal and what is illegal. I have asked for this for several months and Rio has said "he will get to it soon" for at least four months.

It is important to note that, after the Robsons submitted a conceptual site plan and photographs of the Son Silver West Property to Director O'Brien, no Board of Adjustment hearing was scheduled by the City of Sedona. Since there was no evidence available to

⁶⁷ See May 9, 2012 email from Director O'Brien and redacted memorandum titled "Project Status Information May 2012" attached hereto as **Exhibit "29"**.

Director O'Brien to present to the Board of Adjustment with regard to the alleged new structures, Mr. O'Brien never rescheduled the Board of Adjustment hearing.

The history of communications between Director O'Brien and the Robsons, the fact that his December 21, 2011 Decision was an authorized act of the Community Development Director under state statute and the Sedona LDC, and the written format of his decision which included his signature and title as Community Development Director, all support a decision by the Board of Adjustment to reverse the determination of Director Juhlin requiring some type of "formal approval" in order for the December 21, 2011 Decision to become effective.

3. The current buildings, structures and uses on Son Silver West Tracts 41 and 42 are identical to those inspected and approved by Director O'Brien in his December 21, 2011 Decision.

In her 2015 Memorandum, Director Juhlin determined that the materials submitted by Son Silver West's legal counsel as part of the SSW Memorandum "fail to substantiate that conditions outlined in the attached Notice of Violation were in fact present prior to 2011 and not created afterward."⁶⁸ In response to this decision, Son Silver West will be submitting the following supplemental documentation to the Community Development Director and the City of Sedona Board of Adjustment for their consideration: (1) historical aerial photographs of the Son Silver West Property obtained from the City of Sedona GIS Department⁶⁹, (2) an accurate site plan of the existing structures and uses on the Son Silver West property, and (3) sworn statements from Rio Robson and Linda Rose Robson confirming that the buildings, structures and uses on the Son Silver West Property which existed at the time of issuance of the 2015 NOVs were the same buildings, structures and uses that were approved by Director O'Brien in his December 21, 2011 Decision. These supplemental materials will be submitted at least 10 calendar days prior to the Board of Adjustment hearing scheduled for this matter. In the meantime, we submit the following aerial photograph comparisons of: (1) a current Google Earth aerial photograph dated April 2, 2015 and (2) a Google Earth aerial photo dated June 20, 2011. We would request a determination by the Board of Adjustment finding that the current conditions existing on the Son Silver West Property are the same or substantially similar conditions approved by Director O'Brien as being in compliance with the Sedona LDC and 1992 CUP in the December 21, 2011 Decision.

⁶⁸ See Director's 2015 Memorandum attached hereto as **Exhibit "C"**.

⁶⁹ Sedona GIS Analyst, Lisa Leurs, is out of the office until December 2, 2015. At that time, a request for historical aerial photographs will be made with the Sedona GIS Department.

4. The Conceptual Site Plan and Photographs dated March 1, 2012 were submitted by Son Silver West to the Community Development Director in accordance with Director O'Brien's December 21, 2011 Decision.

Within her 2015 Memorandum⁷⁰, Director Juhlin provides the following interpretation of the conceptual site plan and photographs that were submitted by Rio Robson to the City in response to Director O'Brien's December 21, 2011 Decision:

When reviewing the email exchange, it is clear that a March 1, 2012 deadline was established for the Robsons to supply the requested information. It is also clear based on a May 8, 2012 email from former Director O'Brien to staff that he had not received the requested documentation from the Robsons. As of today's date, staff has been unsuccessful in locating any such documentation that John O'Brien, or any other staff may have received in response to the 2011 email request.

...

After thorough review, staff has determined that the documentation supplied by the Robsons in the summer of 2015, is insufficient, does not satisfy the 2011 email request and fails to substantiate that conditions subject to the attached Notice of Violation were present in 2011. The map submitted is not considered an adequate site plan, but rather a more informal marketing map used for customers to navigate the site. The map does not accurately portray what is on site and the photos are not adequately keyed to the map. The buildings are not correctly represented in size, shape, orientation and location, and it does not sufficiently depict property lines. For instance, the Chapel is shown on the 1476 SR 179 property, when in fact it is located on the 61 Arrow Drive property. Additionally, the map does not depict shade structures or outdoor display areas. Since the original impetus for former Director O'Brien's request was a question regarding the legality of the shade structures, the logical result would have been a site plan that showed the shade structures.

...

Further, staff was unable to satisfactorily evaluate the pictures submitted as they are black and white and the exterior photos are of poor quality; many are washed out by sunlight or include significant shadows and do not provide staff with a clear understanding of the size, scope, location and nature of the conditions at that time the photos were taken. None of the buildings have photos of all of the exteriors and large portions of the site seem to have been excluded, based on the best guess of photo locations by staff as shown on the map.

⁷⁰ *Id.*

In the 2015 Memorandum, Director Juhlin also raises an objection to the site plan and photographs submitted by the Robsons because “they were never confirmed as . . . [complete] by Director O’ Brien.”

Son Silver West’s and the Robson’s appeal on this matter are three-fold: (1) Director O’Brien’s December 21, 2011 Decision provided a minimalistic description of the site plan and photographs that were being requested of the Robsons, (2) Director O’Brien made no mention of a requirement that he review and approve the site plan and photographs submitted by the Robsons in order for his December 21, 2011 Decision to be valid, and (3) the conceptual site plan and photographs were submitted by Rio Robson to Director O’Brien at the City of Sedona in early summer 2012, which is contrary to Director Juhlin’s statement that the documentation was not supplied by the Robsons until the summer of 2015.

Director O’Brien stated the following in his December 21, 2012 Decision with regard to the site plan and photographs to be submitted by the Robsons:

3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.
4. By March 1, 2012, I am requesting that your provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

The Robsons submitted a site plan and photographs that they believed, at the time, would satisfy Director O’Brien’s request. In all fairness, there is no statement by Director O’Brien conditioning his December 21, 2011 Decision on his approval of the site plan and photographs submitted. Instead, it appears from his prior email correspondence, that Director O’Brien based his Decision on a prior inspection of the Son Silver West Property performed on November 2, 2011,⁷¹ his research of the City’s records, and his communications with staff.

The request for the site plan and photographs was a follow-up item that would have been used as baseline documentation by both the City and the Robsons moving forward. In response to the inadequacies of the site plan and photographs first raised at the September 9, 2015 meeting with City Attorney Pickels, City Manager Clifton and Director Juhlin, the Robsons offered to submit an engineered site plan and photographs to the City in the SSW Memorandum:⁷²

⁷¹ See Email from Director O’Brien to Rio Robson dated November 4, 2011 attached to SSW Memorandum as **Exhibit “27.”**

⁷² See SSW Memorandum, page 38, attached hereto as **Exhibit “A”.**

[W]e are willing to submit an engineered site plan with dimensions and professional photographs keyed to the site plan for the Son Silver West Property. The uses and structures existing on the Son Silver West Property today were in existence at the time of Director O'Brien's December 21, 2011 decision. There have been no modifications to the Son Silver West Property in that 4-year period. The engineered site plan and photographs will supply the City with confidence when responding to any future allegations or inquiries regarding the uses being conducted on the Son Silver West Property.

This offer to provide an engineered site plan and photographs keyed to the site plan is still extended by the Robsons to the Community Development Director. All-in-all, Director O'Brien's request for a site plan and photographs was well-founded given: (1) the lengthy history of this property as a legal non-conforming use since 1964, (2) the conflicting uses and square footages between those set forth in the 1992 Staff Report and those depicted on the Alternative Site Plan #2, (3) the piecemeal site plan and permit approvals issued by the City after the 1992 CUP approval, and (4) the previous inability of City staff to locate City permit approvals and plans for the Son Silver West Property that the Robsons were able to later produce from their personal records. This site plan and photographs would greatly mitigate future ambiguities and disagreements which might arise regarding the legal non-conforming use rights enjoyed by Son Silver West. We would request that the Board of Adjustment issue a determination finding that, based upon the historical records, sworn statements and the aerial photographs submitted as part of this appeal, the submittal of an engineered site plan of the existing conditions on the Son Silver West Property and professional photographs keyed to the site plan would satisfy the request by former Director O'Brien in his December 21, 2011 Decision for documentation which would establish the legal non-conforming uses, buildings and structures that were permitted on the Son Silver West Property at the time of his Decision.

- 5. The City of Sedona is estopped from issuing a Notice of Violation to Son Silver West for conditions on Tracts 42 and 41 determined to be in compliance by Director O'Brien in his December 21, 2011 Decision and subsequently recognized as compliant by Community Development Department staff and Directors for nearly 4 years thereafter.**

In Arizona, the elements of equitable estoppel are: "(1) the party to be estopped commits acts inconsistent with a position it later adopts; (2) reliance by the other party; and (3) injury to the latter resulting from the former's repudiation of its prior conduct." *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, ¶ 35, 959 P.2d 1256, ¶ 35 (1998). In *Freightways, Inc. v. Arizona Corp. Comm'n*, 129 Ariz. 245, 248, 630 P.2d 541, 544 (1981), the Arizona Supreme Court disapproved of the rule prohibiting the application of principles of equitable estoppel against a sovereign, stating that estoppel will be applied against a sovereign, even a sovereign exercising its governmental functions, when justice

dictates (*quoting Silver City Consol. Sch. Dist. No. 1 v. Bd. of Regents*, 75 N.M. 106, 401 P.2d 95, 99 (1965)) (“We recognize that estoppel in its usual sense is not generally applicable against a sovereign in the exercise of governmental functions, but where right and justice demand it, the doctrine will be applied.”). The government may be estopped only when its “wrongful conduct threatens to work a serious injustice and ... the public interest would not be unduly damaged.” *Valencia Energy Co.* at ¶ 33, 959 P.2d at ¶ 33, *quoting Freightways*, 129 Ariz. at 248, 630 P.2d at 544. In order to find that the public interest would be unduly damaged, the Arizona Supreme Court in *Freightways* stated “that where the application of estoppel will not affect the exercise by the state of its governmental powers and sovereignty, or bind it by unauthorized acts of its officers and employees, estoppel will, when justice dictates, be applied to the state.” *Freightways*, 129 Ariz. at 248, 630 P.2d at 544.

a. The City’s recent alleged violations pertaining to the Son Silver West Property are inconsistent with Director O’Brien’s December 21, 2011 Decision and the actions of the City.

Director O’Brien’s December 21, 2011 decision arose out of his interpretation and enforcement of the Sedona LDC and 1992 CUP with regard to allowable uses and structures on the Son Silver West Property. As the City’s Zoning Administrator and Community Development Department head, Director O’Brien was charged with the statutory authority and responsibility to enforce the City of Sedona LDC and the 1992 CUP. As part of this decision, Director O’Brien identified no outstanding violations of the Sedona LDC and 1992 CUP and requested that Rio Robson submit a site plan and photographs of the existing uses and structures on the Son Silver West Property. Director O’Brien explained the following purpose for the requirement that Rio Robson submit the site plan and photographs to the City:

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won’t be question with what is allowed and what is not allowed.

Following the December 21, 2011 decision, Director O’Brien sent an email and memorandum on May 9, 2012 to fellow staff and future Director Audree Juhlin notifying them of his decision to use the photos submitted by Rio Robson to establish the permitted legal non-conforming uses and structures as a baseline for the future. The City of Sedona later accepted the conceptual site plan and March 1, 2012 photographs submitted by Rio Robson and never rescheduled the pending Board of Adjustment hearing. When Director Audree Juhlin issued a notice of violation to the Robsons on October 8, 2014, she did not assert any violations pertaining to the uses or structures on the Son Silver West Property. Instead, her October 8, 2014 notice addressed violations on the Vacant Tract 40, the Arrow Property and the Bowstring Property only. It was not until our September 8, 2015 meeting, almost 4 years after Director O’Brien’s December 21, 2011 decision, that the City of

Sedona for the first time elected to raise alleged violations on the Son Silver West Property which were previously addressed and resolved by Director O'Brien's enforcement decision finding no violations. The 2015 NOVs and the Director's 2015 Memorandum issued by Director Juhlin contain decisions and interpretations regarding the Son Silver West legal non-conforming uses and structures and the 1992 CUP approval which are contrary to Director O'Brien's December 21, 2011 decision.

b. The Robsons relied on Director O'Brien's December 21, 2011 Decision.

In reliance on the December 21, 2011 decision by Director John O'Brien finding no use or structural violations of the LDC and 1992 CUP, the Robsons undertook significant actions and substantial investments with regard to their Son Silver West business.

The Robsons increased their off-site warehousing and art inventory space from approximately 2,000 s.f. to 8,500 s.f. in order to maintain a constant supply of art objects and goods to the Son Silver West Property for sale. The Robsons are currently in the process of expanding their total warehousing space to approximately 14,000 s.f.

The Robsons expanded their sources and increased their wholesale purchases of art objects and related inventory items for the Son Silver West Property. The assurance supplied by Director O'Brien's decision that the Son Silver West Property was operating with no violations of the LDC or 1992 CUP caused the Robsons to purchase larger volumes of retail inventory to be stored in the expanded warehouse space and transferred to the Son Silver West Property for sale. For instance, the Robsons purchased approximately \$300,000 worth of art inventory from Mexico in 2013 and an additional \$500,000 of inventory in 2014.

The Robsons purchased new art manufacturing equipment totaling approximately \$45,000 and spent approximately \$100,000 updating computer software and telecommunication equipment for the Son Silver West Property.

As a result of these actions taken by the Robsons in reliance on the December 21, 2011 decision by Director O'Brien, the Robsons realized noticeable increases in annual net revenue starting in 2012 through this year to date.

c. The Robsons would be substantially damaged as a result of the City's repudiation of Director O'Brien's December 21, 2011 Decision.

By upholding the 2015 NOVs, the Robsons would suffer substantial injuries as a result of the City's repudiation of Director O'Brien's December 21, 2011 decision. Some of the violations which would cause damage to the Robsons and their business include: (1)

limiting the total outdoor retail display area on Tracts 41 and 42 to 5,000 s.f., (2) requiring 1,950 s.f. within the original home/gallery structure to be used as a single family residence, and (3) removing any enclosed commercial retail areas which exceed 2,250 s.f. Requiring compliance with these alleged violations would severely injure the Robson's Son Silver West business and financial commitments they have made in reasonable reliance on Director O'Brien's decision.

d. The City's wrongful conduct threatens to work a serious injustice to the Robsons and the public interest would not be unduly damaged by the application of estoppel against the City.

Balancing the equities, the interest of the public would not be damaged by upholding the validity of Director O'Brien's December 21, 2011 decision, and there is no threat to the sovereignty of the City in upholding the validity of that decision as issued inasmuch as it has been honored by the City for nearly 4 years. Due to the unique legal non-conforming use at issue in this case, preventing the City from bringing a CUP revocation or suspension action would not affect the exercise by the City of its general governmental powers to apply its LDC city-wide. The Sedona LDC no longer allows the expansion of a legal non-conforming use through the administrative approval of a CUP. Thus, the 1992 CUP that was being enforced by Director O'Brien is truly unique. On the other hand, the damage that would be done to the Robsons, who relied upon the Director's decision in the operation of its Son Silver West business since 2011, would be of great magnitude. The Robsons and Son Silver West request a determination by the Board of Adjustment that the City of Sedona and Director Juhlin are equitably estopped from issuing the following violations which are inconsistent with the December 21, 2011 Decision: (1) limiting the total outdoor retail display area on Tracts 41 and 42 to 5,000 s.f., (2) requiring 1,950 s.f. within the original home/gallery structure to be used as a single family residence, (3) removing any enclosed commercial retail areas which exceed 2,250 s.f.

B. APPEAL OF CODE VIOLATIONS LISTED IN NOVEMBER 10, 2015 NOTICE

1. APPEAL OF CORRECTIVE ACTION A.5: The permitted shed located at 61 Arrow Drive may be used as a private religious and contemplative space accessory to a single-family residence.

As the property owner of 61 Arrow Drive, Rio Robson appeals to the Board of Adjustment Director Juhlin's decision in the 2015 NOV requiring the religious accessory structure referred to as the "Chapel" to be reverted to a shed. While Mr. Robson understands that the property at 61 Arrow Drive is zoned RS-18b Single-Family Residential and that commercial retail uses associated with Son Silver West cannot be conducted in the Chapel building, Mr. Robson appeals the decision of Director Juhlin requiring the private religious accessory structure to be converted back to a shed.

There are no provisions in the Sedona LDC which would prevent a residential property owner from using an accessory building as a private contemplative religious space. Section 902.01(A) of the Sedona Land Development Code allows the following with regard to accessory uses:

A. Accessory uses, including facilities and equipment are permitted in conjunction with any principal use, provided the accessory use is compatible with the principle use and does not alter the character of the premises. Any reference to a permitted use shall include the accessory use.

The use of the enclosed shed as a private contemplative religious space, with no retail items for sale or commercial operations being conducted within, would be compatible with the principle residential use and would not alter the character of the premises. Thus, Mr. Robson requests a determination from the Board of Adjustment finding that Director Juhlin erred in requiring Mr. Robson to convert the private accessory religious space within the permitted building back to a shed.

2. APPEAL OF CORRECTION ACTION C.1: The Community Development Director erred in issuing a notice of violation to the owner of 1535 SR 179 for unlawful overflow parking by customers and third parties after owner took necessary steps to post the vacant lot with “No Parking” signs.

According to the 2015 NOV issued by Director Juhlin, the Robsons and Son Silver West are in violation of Article 6 (District Regulations RS-18b) and Article 12 (Non-Conforming Situations) of the SLD by allowing over-flow parking and receiving and storage of merchandise on Vacant Tract 40. The Robsons and Son Silver West appeal this alleged violation inasmuch as they have ceased to allow over-flow parking and receiving and storage of merchandise on the vacant lot. The Robsons have posted “No-Parking” signs on Vacant Tract 40. They are unable to erect a wall or fence further restricting vehicular access to and from Vacant Tract 40 and the Son Silver West commercial driveway because there is an existing easement of record which grants the owner of Tract 39 vehicular access across the Robson’s Vacant Tract 40 for purposes of ensuring Tract 39’s access to SR 179.⁷³ When the SR 179 improvements were constructed, no driveway cut was allowed for Tract 39. Therefore, the only access to and from Tract 39 to SR 179 is located along its shared property line with Vacant Tract 40, which said access road then turns north through the Robson’s Vacant Tract 40 to connect to the Son Silver West paved commercial driveway which intersects with SR 179. Thus, the Robsons and Son Silver West request a determination from the Board of Adjustment finding the Robsons to be in compliance with

⁷³ See Easement recorded against Vacant Tract 40 at Docket 250, Page 114, Official Records of Coconino County Recorder attached hereto as **Exhibit “E”**.

Article 6 and Article 12 and that the “No-Parking” signs currently erected on Vacant Tract 40 are an adequate measure to discourage parking on this vacant lot.

3. **APPEAL OF CORRECTIVE ACTION C.2: The Community Development Director erred in issuing a Notice of Violation to the owner of 1535 SR 179 requiring that the owner cease and desist all use of the vacant lot for commercial purposes when the City of Sedona Community Development Department previously approved the relocation and construction of a commercial driveway on 1535 SR 179 to allow ingress and egress traffic to travel to and from Son Silver West Tracts 42 and 41 and SR 179.**

Under Corrective Action C.2 of the 2015 NOV, Director Juhlin requires that the Robsons and Son Silver West immediately “cease and desist all use of this property [Vacant Tract 40] for commercial purposes including but not limited to shipping/receiving activities and storage of merchandise.” The Robsons and Son Silver West do not dispute the prohibition of the specified commercial uses on Vacant Tract 40 (i.e. shipping/receiving activities and storage of merchandise). On the other hand, they must appeal the requirement that they cease and desist all use of Vacant Tract 40 for commercial purposes because the driveway located upon and along the north boundary of Vacant Tract 40 is used as the main commercial driveway allowing vehicular access to and from the Son Silver West Property and SR 179. The location of this commercial driveway on Vacant Tract 40 was previously approved by Director O’Brien and ADOT for traffic safety purposes. On August 23, 2004 and September 4, 2004, Steve O’Brien of ADOT, the Robsons and Sedona Community Development Director John O’Brien reached an agreement whereby a new driveway connecting the Son Silver West parking lot to Highway 179 would be located and paved partly on Vacant Tract 40 to accommodate a full and safe median break to serve Son Silver West.⁷⁴ The new driveway and median break would allow circulation of large delivery trucks to the site and would eliminate any backing of large trucks onto SR 179. Given this prior approval, the Robsons and Son Silver West request a determination of the Board of Adjustment allowing the continued use of the commercial driveway on Vacant Tract 40.

4. **APPEAL OF CORRECTIVE ACTION D.1: The existing outdoor retail display areas on the Son Silver West Property are permitted as a result of: (1) the legal non-conforming outdoor retail display areas historically located on Tract 42, (2) the Planning and Zoning Commission’s approval of the 1992 CUP and Alternative Site Plan # 2 allowing the expansion of an additional 5,000 square feet of outdoor retail display area on Tract 41, and (3) the 1993 Site Plan Approval which allowed the relocation of part of the outdoor retail**

⁷⁴ See ADOT Meeting Notes dated August 23, 2004 and Record of Conversation dated September 8, 2004, attached to SSW Memorandum as **Exhibit “16”**.

display area from Tract 41 to the former parking area along the frontage of Tract 42.

The Robsons and Son Silver West appeal Director Juhlin's interpretation of the 1992 CUP and the Director's decision set forth in the 2015 NOV requiring the removal of all outdoor retail display area in excess of the approved 5,000 square feet for the Son Silver West Property. The approved site plans, historical photographs and the 1992 Staff Report on file with the City of Sedona support a Board of Adjustment determination that the CUP issued to Son Silver West permitted the 5,000 s.f. expansion of the outdoor retail display area on Tract 41 and did not address the existing outdoor retail display areas which had been maintained as a legal non-conforming use on Tract 42 since 1960. Thus, the CUP did not limit the entire Son Silver West Property to 5,000 s.f. of outdoor retail display area. It limited the expansion of the existing outdoor display area on Tract 41 by 5,000 s.f. Our conclusion is supported by the following:

- Before the CUP approval in 1992, the Son Silver West outdoor retail display area was located on both Tract 41 and Tract 42, as shown by a historical panoramic photograph of the Son Silver West Property taken prior to the permitted relocation and reconfiguration of the parking area from Tract 42 to Tract 41 (circa 1991). As shown on the left side of the photograph, some of the outdoor retail display area was located along SR 179 on a grassy area of Tract 41. Outdoor retail display areas are also shown between the gallery building and former parking area on Tract 42.

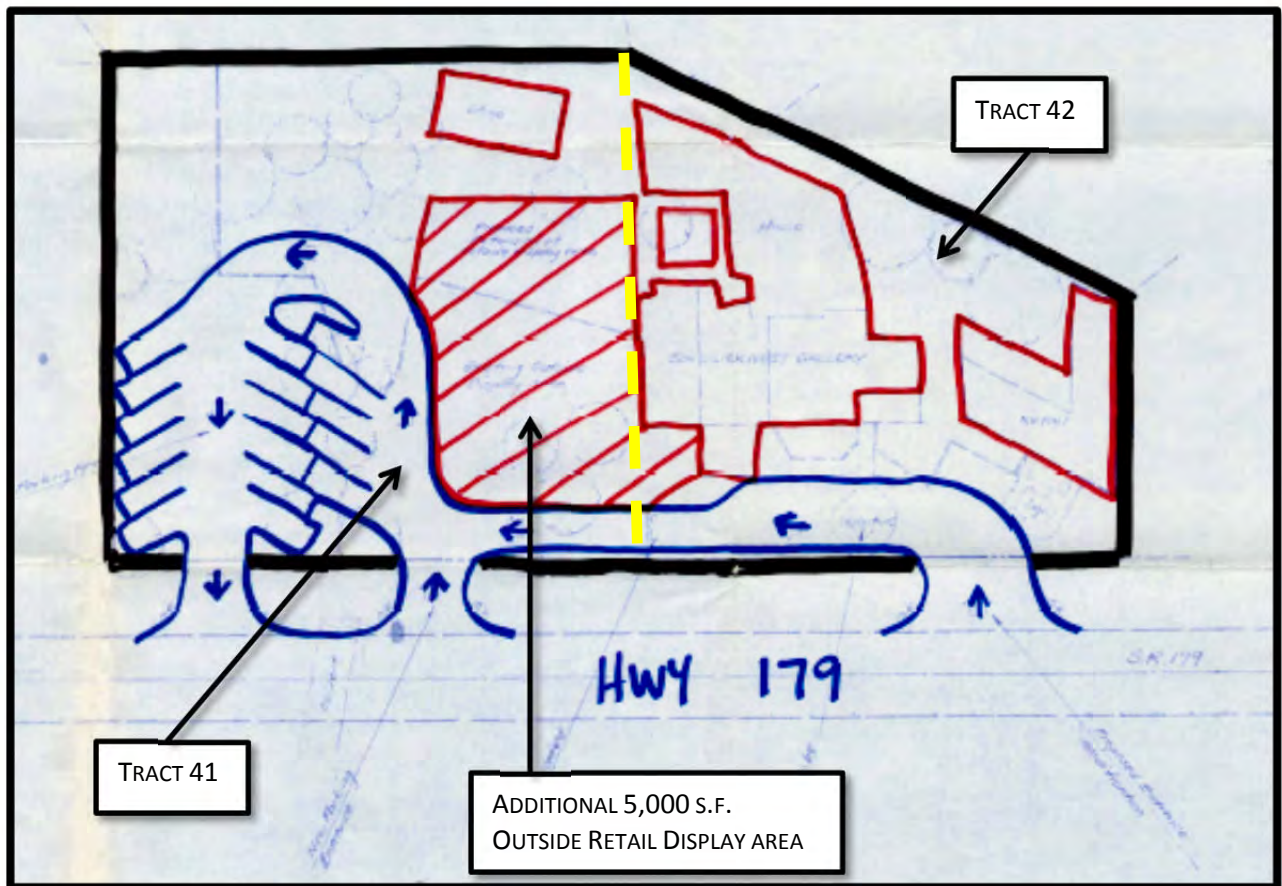


- The 1992 Plan and Alternative Site Plan #2 showed the extent of the existing and future proposed outdoor display area measuring approximately 60 feet by 90 feet located in the north-half of Tract 41 and lying south of the gallery, which would be left untouched after the new parking improvements were constructed. Neither the 1992 Plan nor the Alternative Site Plan #2 show the outdoor display areas that would be removed from the Tract 41 frontage as a result of the reconfiguration of the parking area and accessway. These plans also did not identify the existing outdoor display areas on Tract 42. Notably, the outdoor display area shown in the

panoramic photograph located between the east side of the gallery building and former parking area on Tract 42 is not depicted. This is expected inasmuch as the site plan is titled "Parking Lot Expansion Plan and Access Modifications." The plan was limited in terms of identifying only those areas of the Son Silver West Property impacted by the proposed parking and access modifications.

ALTERNATIVE SITE PLAN #2 APPROVED WITH CUP 92-3 ON SEPTEMBER 15, 1992

***With FJS, PC Annotations Designating Tracts 41 and 42 & Additional 5,000 S.F. of Outdoor Retail Display**



The location of the additional 5,000 s.f. of outdoor retail display area to be expanded onto Tract 41 is shown on Alternative Site Plan #2 with diagonal red lines. This expanded outdoor retail display area measures approximately 60 feet by 90 feet in width, according to the scaled drawing. The 1992 Plan and the Alternative Site Plan #2 do not identify the locations of the outdoor retail display areas which were then existing on Tract 42.

- The staff report dated September 15, 1992 emphasizes that the CUP addresses the outdoor display areas on the "southern one-half" of the Son Silver West Property.⁷⁵ The Summary Sheet for CUP 92-3 provides a parcel map with both Tracts 41 and 42

⁷⁵ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached hereto as **Exhibit "3"**.

delineated and identifies the former APNs for both Tracts 41 and 42 as being the location of the property. Thus, the “southern one-half” of the property which was the subject matter of the legal non-conforming use expansion and CUP application could only have been Tract 41. Specifically, the staff report states the following in support of our conclusion that the 5,000 s.f. outdoor retail display area was a limitation on the legal non-conforming use expansion onto Tract 41 only:

The City of Sedona and the current property owners disagree about the legal establishment of the large outside display area associated with the business as well as other associated uses on the southern one-half portion of the subject property.

...

Alternative site plan #1 showsAlternative site plan #2 shows a 30-foot wide one-way drive, with no parking in front of the building. This drive would access the new 17 space lot on the southern one-fourth of the property. The new parking lot would also be accessed the same as site plan #1. Both plans discuss expansion and shifting of the existing outside display area.

...

Development Proposal

- Conditional use permit requested to allow for expansion of nonconforming use
- If approved, would allow for continued use of 5,000 square foot outside sales/display area with minor modifications, and construction of 17-space parking lot on southern one-fourth of property.

...

Recommendation

The current use of the southern one-half of the subject property, specifically the 5,000 square foot outside sales/display area has been the subject of City zoning enforcement actions for approximately three years.

...

The applicant is pursuing an avenue of administrative relief (CUP request) which, if approved, would allow for the continued use of the disputed display area and the construction of a new parking area.

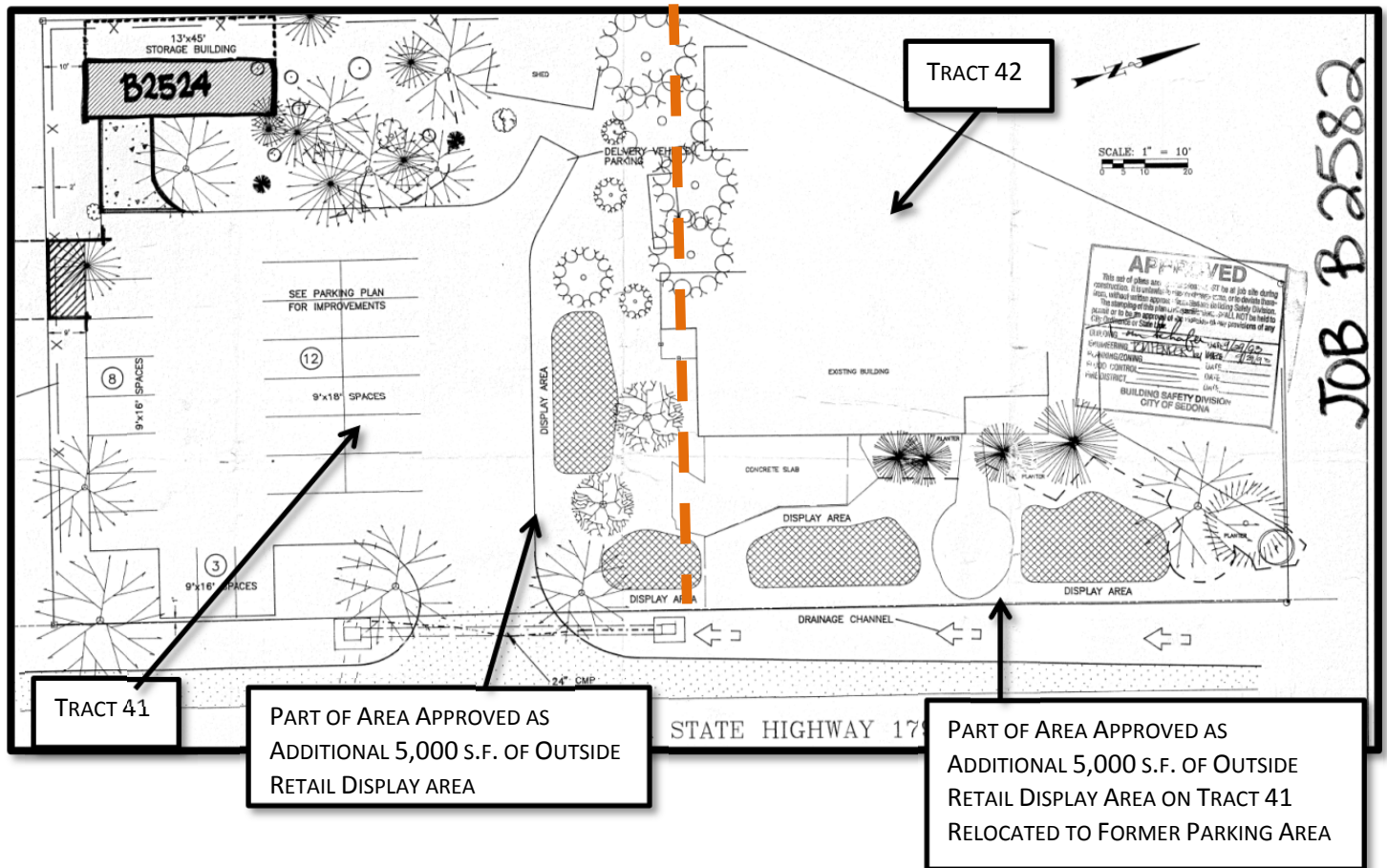
Emphasis added.

- On September 29, 1993, former Community Development Director, Tom Schafer, approved the 1993 Plan.⁷⁶ The 1993 Plan shows an approximate 30-foot by 90-foot outdoor retail display area lying along the north side of Tract 41 and south of the gallery building that was existing at the time of the CUP

⁷⁶ See 1993 Plan attached to SSW Memorandum as **Exhibit “11”**.

approval in 1992. Based upon the approximate 60-foot width of the outdoor display area shown on the prior 1992 Plan and Alternative Site Plan #2, it is obvious that the display area existing along the north side of Tract 41 at the time of the CUP approval was reduced by almost half in order to accommodate the new parking area on Tract 41. Not by coincidence, the 1993 Plan also shows outdoor retail “display areas” within the entire north-south area lying between the existing Tract 42 gallery and retail buildings on the west and the drainage channel abutting Highway 179 on the east. This additional outdoor display area shown on Tract 42 along Highway 179 on the 1993 Plan was relocated from the 5,000 s.f. outdoor display area approved along the north side of Tract 41 by the CUP. Thus, in 1993, Director Schafer approved these outdoor retail display areas as they currently exist today. Again, it is clear that the 5,000 s.f. of outdoor retail display was approved for expansion of the legal non-conforming use onto Lot 41. There is no evidence to support Director Juhlin’s interpretation that the 5,000 s.f. of outdoor retail space applied to any area except Tract 41.

1993 PLAN APPROVED BY FORMER COMMUNITY DEVELOPMENT DIRECTOR SCHAFER
***With FJS, PC Annotations Designating Tracts 41 and 42 and Outside Retail Display Areas**



In summary, based upon the history of the outside retail display areas that were located throughout Tract 42 when the Property was originally operating as the La Galleria in Coconino County and later as Son Silver West at the time of Sedona's incorporation in 1988, the outside display areas on Tract 42 were already permitted as a legal non-conforming use. It was not until the Robsons purchased Tract 41 in 1987 that the City of Sedona began issuing notices of violation for an alleged expansion of the outside retail display areas onto Tract 41. With this background, the 1992 Staff Report's references to the 5,000 s.f. expansion of the outdoor retail display areas onto the south half of the property is placed in context. The Robsons and Son Silver West were limited to 5,000 square feet of additional outdoor display area on Tract 41 only. The remaining outdoor display areas on Tract 42 are grandfathered. Therefore, we request a ruling by the Board of Adjustment reversing the erroneous decision of Director Juhlin requiring the total outdoor retail display area to be limited to 5,000 square feet on the Son Silver West Property.

5. **APPEAL OF CORRECTIVE ACTION D.2: The Son Silver West retail space in enclosed buildings is permitted up to approximately 4,328 s.f. as depicted on the survey map prepared by Shephard Wesnitzer, Inc. and approved by the Planning and Zoning Commission as part of the 1992 CUP Condition No. 1 as "Alternative Site Plan #2".**

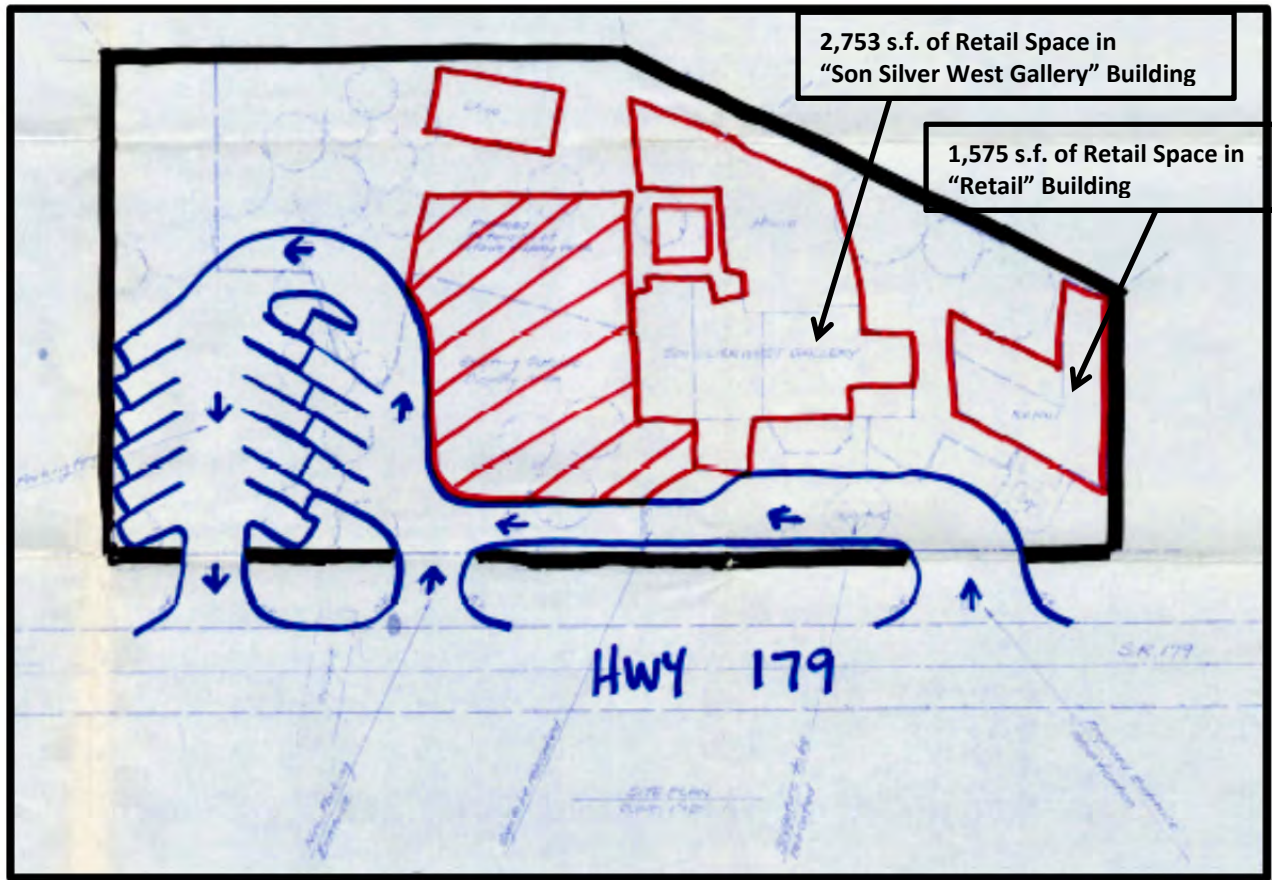
The City Planning and Zoning Commission's approval and adoption of the uses and physical structures depicted on Alternate Site Plan #2, as set forth in Condition No. 1 to the 1992 CUP, constitutes an official City approval which allows enclosed retail display areas totaling 4,328 square feet on the Son Silver West Property. Condition No. 1 to the 1992 CUP states, **"Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2)."**⁷⁷ Emphasis added. Alternate Site Plan #2 was approved by the Planning and Zoning Commission using the full-sized, drawn-to-scale (1 inch=20 feet) Shephard-Wesnitzer plan titled "Parking Lot Expansion Plan and Access Modifications" dated April 4, 1992, Job No. 91038.⁷⁸ By using an engineer's 20-scale to calculate the building areas labeled as "Son Silver West Gallery" and "Retail" on the Alternate Site Plan #2, the Robson's architect has confirmed a total allowable building area of 4,328 square feet dedicated to retail space. For demonstrative purposes, we have provided the retail square footages scaled take-off of Alternative Site Plan #2 below:

⁷⁷ See 1992 Staff Report attached to SSW Memorandum as **Exhibit "3"**.

⁷⁸ See 1992 Plan and Alternate Site Plan #2 attached to SSW Memorandum as **Exhibit "10"**.

ALTERNATIVE SITE PLAN #2 APPROVED WITH CUP 92-3 ON SEPTEMBER 15, 1992

***With FJS, PC Annotations Designating Scaled, Retail Building Square Footages**



Based upon this survey of the existing buildings, which was later adopted by the Planning and Zoning Commission as Alternative Site Plan #2, there is a significant discrepancy between the retail space adopted by the Planning and Zoning Commission on the Plan and the square footages referenced in the 1992 Staff Report. Clearly, Alternative Site Plan #2 provides the most accurate depiction of the legal non-conforming retail space in enclosed buildings at the time of the 1992 CUP approval. Therefore, we would request determinations by the Board of Adjustment finding: (1) the Planning and Zoning Commission's approval of Alternative Site Plan #2 as part of the 1992 CUP allowed an existing 4,328 s.f. of enclosed retail space on Tract 42 and (2) Director Juhlin's decision in the 2015 NOV limiting the enclosed retail space to 2,250 s.f. to be in error and reversed.

- 6. APPEAL OF CORRECTIVE ACTION D.2: The southernmost building on Tract 41, referred to as "Building A" by Director Juhlin in the 2015 NOV, was approved by the City for storage in connection with the existing Son Silver West commercial operations.**

The Robsons and Son Silver West appeal Director Juhlin's decision in the 2015 NOV relating to the use of the southernmost building on Tract 41, referred to as "Building

A" by Director Juhlin. The purpose of this appeal is to seek clarification that this building may be used for commercial storage purposes. Neither the 1993 Plan nor the permit records for this building limit its use to residential storage. Therefore, we would request a Board of Adjustment determination that Son Silver West may use the southernmost building on Tract 41 as a storage building in connection with its commercial business.

7. APPEAL OF CORRECTIVE ACTION D.2: The northernmost building on Tract 41, referred to as "Building B" by Director Juhlin in the 2015 NOV, was approved as an art workshop to be used in connection with the existing Son Silver West commercial operations.

The Robsons and Son Silver West appeal Director Juhlin's decision in the 2015 NOV requiring the northernmost building on Tract 41 to be returned to a storage shed. The Alternative Site Plan #2 approved by the Planning and Zoning Commission as part of the 1992 CUP designates the use of this building as "shop."⁷⁹ The City's permit records for this structure approved its use as a "new commercial structure" and "shop."⁸⁰ Therefore, we would request a determination by the Board finding the approved use of that northernmost building on Tract 41 is for a commercial art workshop and not a storage shed as set forth in the 2015 NOV.

8. APPEAL OF CORRECTIVE ACTION D.3: The single-family residence depicted on Alternative Site Plan #2 as "House" was approved as an administrative office and employee lounge by Director O'Brien's December 21, 2011 Decision.

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV which requires the Robsons to restore 1,950 square feet of the primary dwelling unit to single-family residential use. Former Director O'Brien performed an inspection of the former residence on November 2, 2012.⁸¹ At that time, the former residence was being used as administrative office space and an employee lounge complete with a full kitchen, bathroom, and meeting area. The administrative office and employee lounge space remains locked at all times and is not open to the public. Inasmuch as the retail space under roof was not being expanded by the conversion of the residence to office and employee lounge space, Director O'Brien approved the existing use during his inspection with Rio Robson and in his December 21, 2011 Decision. Director O'Brien was authorized as the Zoning Administrator to interpret compliance with the 1992 CUP given that the existing administrative office and employee lounges uses complied with the intent of the 1992 CUP to limit further non-conforming uses which would generate additional traffic and intensity to the Son Silver West Property.

⁷⁹ See Alternative Site Plan # 2 attached to SSW Memorandum as **Exhibit "10."**

⁸⁰ See Permit Records for art workshop building attached hereto as **Exhibit "J."**

⁸¹ See November 4, 2011 Email from Director O'Brien to Rio Robson attached to SSW Memorandum as **Exhibit "27"**.

9. APPEAL OF CORRECTIVE ACTION D.4: The existing wrought-iron fence lying along the frontage of Tract 42 was approved by Director O'Brien and issued a fence permit in accordance with Condition 6 to the 1992 CUP.

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring additional screening to be incorporated along the Son Silver West Property frontage along SR 179. As cited by Director Juhlin, Condition No. 6 to the 1992 CUP states that the “outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.”⁸² Emphasis added. Following the 1992 CUP approval, on June 7, 1994, former Community Development Director Tom Schafer and the Robsons entered into an agreement with regard to the Robson’s future compliance with CUP Condition No. 6 as follows:

Condition No. 6 – The Robsons agreed that earthen berms and screen landscaping would be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994 and October 1, 1994, respectively. A combination of earthen berming, landscaping and rustic fencing was also required in order to satisfy any additional visual screening requirements of all outside display areas as approved by the Director no later than October 1, 1994.

On February 22, 1995, John O'Brien, who at the time was an Associate Planner with the City of Sedona, sent a letter to Bill Robson which provided confirmation that all required improvements required under the 1992 CUP for the Son Silver West Property had been completed, including the screening requirement of Condition No. 6, with the exception of: (1) elimination of the existing mercury vapor lighting [Condition 8], (2) installation of additional parking lot lighting [Condition 9], and (3) construction of the SR 179 improvements [Conditions 4]. Therefore, as of February 22, 1995, the Robsons had complied with screening requirements along the Son Silver West Frontage.

The existing wrought-iron decorative fence erected along the Son Silver West Property frontage also met the satisfaction of Director O'Brien. This is evidenced by the City’s permit approval for the wrought-iron fence issued on September 8, 2011.⁸³ Director Juhlin has no authority to now decide that the existing, permitted fence does not meet her satisfaction. The Robsons and Son Silver West request a Board of Adjustment determination reversing the Decision of Director Juhlin and finding the wrought-iron fence permit to be sufficient evidence of Compliance with Condition No. 6 of the 1992 CUP.

⁸² See 2015 NOV attached hereto as **Exhibit “C”**.

⁸³ See Wrought-Iron Fence Permit Approval attached to SSW Memorandum as **Exhibit “23.”**

10. APPEAL OF CORRECTIVE ACTION D.5: The existing light fixtures on Tracts 42 and 41 were approved by Director O'Brien in accordance with Condition 9 to the 1992 CUP.

The Robsons and Son Silver West also appeal the decision of Director Juhlin in the 2015 NOV requiring the existing light fixtures to be shielded in compliance with Condition No. 9 of the 1992 CUP and the Sedona LDC. Condition No. 9 required that “[a]ll other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.” Emphasis added. After entering into the Agreement with former Director Schafer on June 7, 1994, the Robsons agreed to install parking lot lighting no later than August 1, 1994. It was agreed that all lighting would be shielded to the satisfaction of the Community Development Department Director no later than August 15, 1994. The lighting installed in the parking lot area on the Son Silver West Property met the satisfaction of former Director O'Brien and was not listed as an outstanding violation in the December 21, 2011 Decision. Therefore, we request a determination by the Board of Adjustment reversing Director Juhlin's decision requiring the existing light fixtures to be shielded.

11. APPEAL OF CORRECTIVE ACTION D.6: The existing shade structures on Tracts 42 and 41 were approved by the December 21, 2011 Decision by Director O'Brien.

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring the submittal of building permit applications for the shade structures erected or expanded on the Son Silver West Property without prior approvals. All of the existing shade structures on the Son Silver West Property have either been in existence prior to the incorporation of the City of Sedona and therefore enjoy legal non-conforming status, have been approved by the City of Sedona through the issuance of a building permit, or were approved as part of the December 21, 2011 Decision. The December 21, 2011 Decision culminated as a result of Director O'Brien's August 31, 2011 notice of violation which questioned 2 shade structures on the Son Silver West Property. After researching the City's records and performing an inspection of the property on November 2, 2011, Director O'Brien made his December 21, 2011 Decision determining that the 2 shade structures were permitted as follows:

2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building. You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.⁸⁴

⁸⁴ See December 21, 2011 Decision by Director O'Brien attached to SSW Memorandum as **Exhibit “28”**.

Director O'Brien mentioned no other shade structure violations in his December 21, 2011 Decision. The Robsons have erected no additional shade structures since the December 21, 2011 Decision. Therefore, we would request a determination by the Board of Adjustment reversing Director Juhlin's decision requiring building permit applications for existing shade structures on the Son Silver West Property.

12. APPEAL OF CORRECTIVE ACTION D.6: The 1992 CUP approval, Conditions of Approval, and Alternative Site Plan #2 do not limit the square footage of shade structures erected in outdoor retail display areas on the Son Silver West Property.

Inasmuch as the 1992 CUP Conditions, the 1992 Staff Report, and the Alternative Site Plan #2 approved by the Planning and Zoning Commission failed to address or provide requirements for the existing shade structures on the Son Silver West Property, the Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring the Robsons to submit building permit applications for the shade structures.

13. APPEAL OF CORRECTIVE ACTION D.7: The existing 6-foot tall solid wood fence and the 6-foot tall masonry wall lying along the backside or west property line of Son Silver West Tract 41 and 42 do not require the issuance of a permit under the City of Sedona Building Code.

Son Silver West and the Robsons appeal the decision of Director Juhlin in the 2015 NOV requiring building permits to be obtained for the existing masonry wall and wooden fence lying along the west property line of the Son Silver West Property. As to the wall which was relocated by the Robsons onto the Arrow Property to the north of the Chapel, the Robsons will be applying for a building permit to replace that wall with a new fence along the shared property line between the Arrow Property and the Son Silver West Property. As to all other existing masonry walls and wood fences located along the west property line of the Son Silver West Property, these walls remain a legal non-conforming use and were inspected by former John O'Brien during his November 2, 2011 inspection. No rear wall or fence violation was issued by Director O'Brien in his December 21, 2011 Decision or in his communications leading up to the Decision. Thus, we request that the Board of Adjustment issue a ruling finding Director Juhlin's requirement that the Robsons obtain a building permit for the wall/fence along the backside of the property to be erroneous.

C. CHILIES

1. **The preparation, roasting, display and vending of chilies on the Son Silver West Property are permitted as a legal non-conforming use.**

The Robsons and Son Silver West appeal the decision of Director Juhlin in the 2015 NOV requiring them to cease the preparation, roasting, display and vending of produce, including but not limited to chilies.⁸⁵ The sale of chilies has been conducted on the property since the days of the La Galleria, prior to the Robson's purchase of Tract 42 in 1981 and prior to the City's incorporation. A letter from the prior owner of Tract 42, Ms. Ernestine Todd, dated February 2, 1990, was submitted to prior Sedona Community Development Director, Tom Schafer, stating that, during her ownership of the La Galleria, she conducted "the outdoor display of pottery, chimes, chilies and southwestern art-and-craft items."⁸⁶

The City's approval of the 1991 chili cage plans for repair of the existing roof and structure also demonstrate that the Robsons have conducted the display and vending of chilies on the Son Silver West Property since at least 1991.⁸⁷ The City's chili cage permit records include pictures of the strings of chilies being displayed in the outdoor retail display area for sale to the public.⁸⁸ This prior decision of approval by the City directly contradicts the 2015 NOV requiring Son Silver West and the Robsons to immediately cease all preparation, roasting, display and vending of chilies on the Son Silver West Property. As mentioned above, the Robsons have been selling chilies at their gallery for more than 30 years. We would request that the Board of Adjustment find the chili cage plan and permit approval records to be satisfactory evidence and that the Robsons have the vested right in reliance upon such permit to continue the legal non-conforming use of preparing, roasting, displaying and vending chilies on the Son Silver West Property.

D. BUSINESS LICENSE

1. **The revocation of Son Silver West's Business License in accordance with Section 5.05.040(A) in the Sedona City Code is unlawful when imposed as a result of an interpretation of non-compliance with the Sedona Land Development Code.**

The Robsons and Son Silver West hereby appeal to the Board of Adjustment the interpretation and application by Director Juhlin, within the 2015 NOV, of the license

⁸⁵ See 2015 NOV attached hereto as **Exhibit "C"**.

⁸⁶ See Letter from E. Todd attached to SSW Memorandum as **Exhibit "4"**.

⁸⁷ See Chili Cage approved plan attached to SSW Memorandum as **Exhibit "5"**; See also Chili Cage permit records recently supplied by the City of Sedona on November 24, 2015 and attached hereto as **Exhibit "D"**.

⁸⁸ See **Exhibit "D"** attached hereto.

revocation procedures pursuant to Sedona City Code Section 5.05.040(A) to potentially revoke the business license of Son Silver West as a result of the alleged pending zoning and building code violations. Section 5.05.040(A) of the City Code allows the City or its designee to suspend, revoke or deem to be invalid a business license for the alleged violation of the Sedona City Code, the Sedona Land Development Code or the Arizona Revised Statutes. Yet, due process considerations would prevent the revocation of a business license when a property owner has filed an administrative appeal of the alleged violations with the City.

E. UNLAWFUL REVOCATION OF 1992 CUP FOR VIOLATIONS ON PROPERTIES SEPARATE AND APART FROM SON SILVER WEST PROPERTY GOVERNED BY 1992 CUP

- 1. A conditional use permit approval issued for Son Silver West Tracts 42 and 41 may not be revoked as a result of alleged violations of the Sedona Land Development Code on Tracts 40, 45 and 49, when Tracts 40, 45 and 49 were not a part of the conditional use permit approval.**

The Robsons appeal the interpretation and decision of Director Juhlin in the 2015 NOV that the Planning Commission may, pursuant to Section 402.10 of the Sedona LDC, revoke the 1992 CUP for the Son Silver West Property as a result of outstanding violations for adjoining residential properties owned by the Robsons but not included within or subject to the 1992 CUP approval. The revocation provisions applicable to the Son Silver West Property state:

E. If a use permit is granted subject to conditions, upon failure to comply with conditions, a conditional use permit shall be suspended automatically, may invoke enforcement per Article [14](#) SLDC, or may be revoked . . .

The Arrow Property, Bowstring Property and the Vacant Tract 40 are not subject to the 1992 CUP approval of the conditions granted thereunder. Therefore, the Robsons non-compliance with any violations asserted by Director Juhlin within the 2015 NOV which apply to those 3 properties cannot result in the revocation of the 1992 CUP approved solely for the Son Silver West Property. As such, the Robsons request a determination by the Board of Adjustment finding that alleged violations on the Arrow Property, Bowstring Property and the Vacant Tract 40 cannot form the basis for revocation of the 1992 CUP under Section 402.10 of the Sedona LDC.

F. VESTED RIGHTS OF SON SILVER WEST

- 1. Director Juhlin erred by making the determination in the 2015 NOV and Director's 2015 Memorandum that documentation submitted by Son Silver West to Director Juhlin in the September 22, 2015 Memorandum and records on file at the City of Sedona do not provide sufficient evidence of prior City approvals which would allow certain existing conditions on the Son Silver West Property to continue.**

The Robsons and Son Silver West respectfully submit this appeal of the interpretation and decision by Director Juhlin in the 2015 NOV that, after reviewing the documentation submitted with the SSW Memorandum, "staff found no evidence that provided any formal approval allowing for the existing conditions and expansion above that which was approved as part of the 1992 CUP."⁸⁹ As set forth under each issue on appeal above, we request a Board of Adjustment determination finding that the Robsons and Son Silver West submitted evidence of City approvals allowing the existing conditions set forth in this appeal.

- 2. Certain existing uses and structures on the Son Silver West Property, which are being challenged by Director Juhlin as unlawful, are vested as a matter of law.**

The owners of Son Silver West enjoy vested rights with regard to: (1) the legal nonconforming use of the Son Silver West Property, (2) all legal non-conforming structures and outside retail display areas in existence on Tract 42 at the time of the CUP approval in 1992, (3) the construction of the southernmost building on Tract 41, (4) the current parking configuration on Tract 41, and (5) the existing outdoor retail space along the frontage of Tract 42 as well as the approximate 30-foot area along the north property line of Tract 41. The Robsons enjoy vested rights with regard to Item Nos. 1 and 2 as legal nonconforming use rights resulting from Sedona's incorporation in 1988 and the City Planning Commission's approval of the 1992 CUP. The uses and structures identified in Item Nos. 3, 4 and 5 are vested as a result of: (1) the September 29, 1993 Decision by Director Tom Schafer approving the Son Silver West site plan and parking plan (the "**1993 Plan**") as being in general conformance with the 1992 CUP, (2) the City's issuance of building permits related thereto, and (iii) the Robson's good faith reliance thereon as demonstrated by their substantial work and incurrence of substantial expenditures to complete the construction of those improvements.

The Arizona common law provides for delayed vesting of development rights. As a general rule, this involves the issuance by the municipality of a building permit or project-specific development approval and the good faith reliance thereon by the developer in the

⁸⁹ See 2015 NOV attached hereto as **Exhibit "C"**.

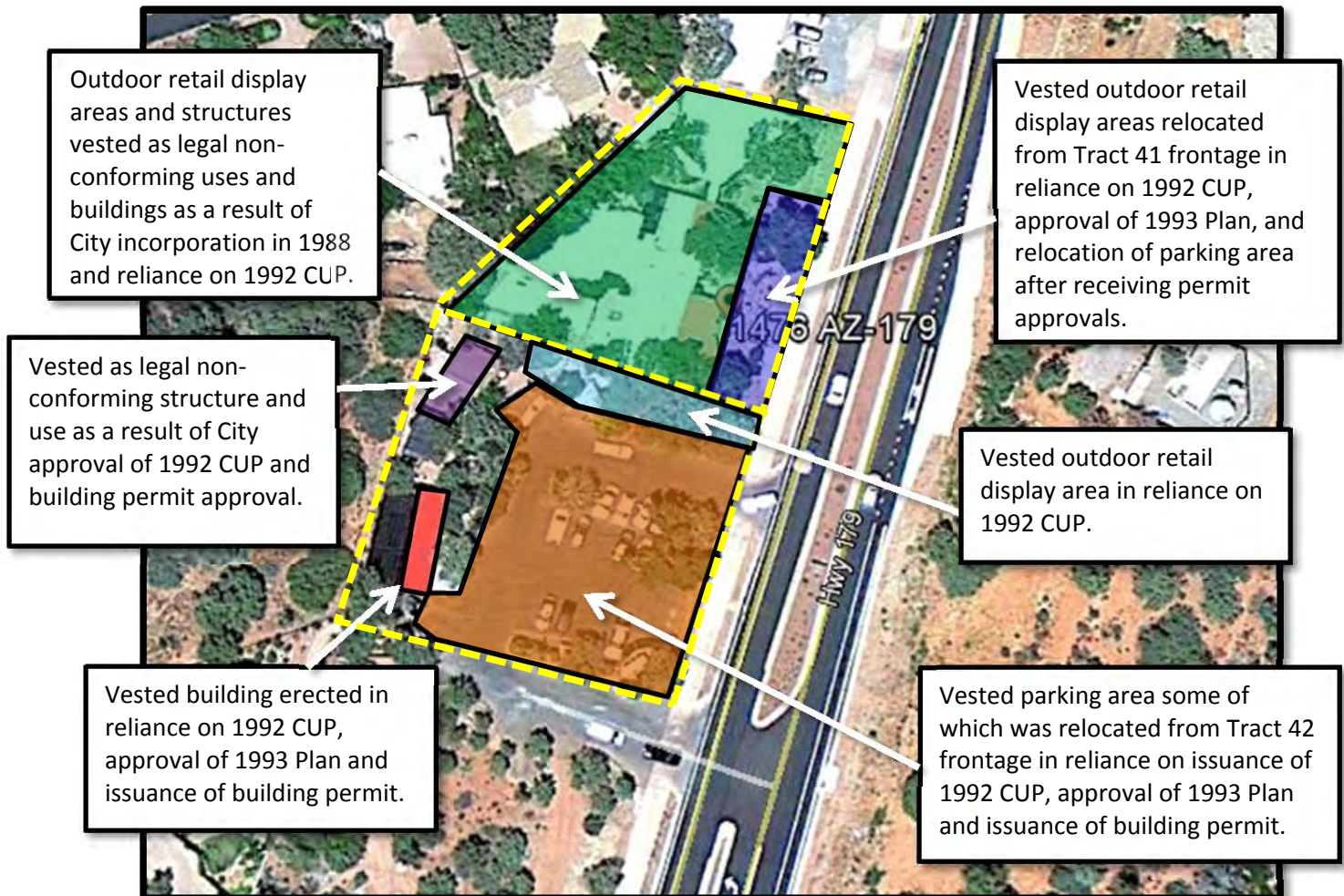
form of substantial work, incurrence of substantial expenditures and/or incurrence of substantial liability. Once a building permit is issued as duly authorized by law and the permittee has materially acted in reliance thereon, the right to continue under those rules is vested and municipality may not arbitrarily revoke or change the rules under which the permit was issued. *Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz.App. 600, 607, 557 P.2d 532 (App.1976). This common law rule is based upon the theory of equitable estoppel.

In the legal nonconforming use context, “a nonconforming land use is a vested property right and is ‘defined as a lawful use maintained after the effective date of a zoning ordinance prohibiting such use.’” *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 182, 181 P.3d 219, 229 (App.2008). In this case, the Robsons, as owners of the Son Silver West Property and its legal non-conforming use, enjoy a vested right to preserve and maintain the development that existed on the Son Silver West Property prior to the incorporation of the City of Sedona in 1988 and as a result of the 1992 CUP approval, the 1993 Plan approval and building permits issued by the City in accordance with development regulations applicable to the property in existence on the effective date that vesting occurred. At the time of the 1992 CUP approval and the 1993 Plan and building permit approvals, the original Sedona Community Plan identified the Son Silver West Property with a General Commercial land use designation. Inasmuch as the 1992 CUP and permit approvals allowed the expansion of a commercial retail use in conformance with City’s Community Plan at that time, the Robsons were justified in placing good faith reliance on these approvals.

As generally depicted on the aerial photograph below and the 1993 Plan attached hereto as **Exhibit 11**, the Robsons relocated and built a new expanded parking lot area on Tract 41, constructed the southernmost building on Tract 41 and relocated part of the 5,000 s.f. of outdoor retail display area granted under the 1992 CUP to the former parking lot area on Tract 42, all while justifiably relying on the: 1) the 1993 Plan approved by former Community Development Director Tom Schafer and 2) building permits issued for the southernmost building and the new parking area on Tract 41. Inasmuch as these substantial expenditures and improvements were made by the Robsons in good faith reliance on the City’s approvals and permits issued, the Robsons possess vested property rights in the location and square footage of the buildings, parking area and outdoor retail display areas existing at the time of the City’s incorporation in 1988 and as shown on the 1993 Plan.

VESTED RIGHTS OF SON SILVER WEST
JUNE 2011 GOOGLE PHOTOGRAPH OF SON SILVER WEST PROPERTY DEMONSTRATING
IMPROVEMENTS AND AREAS CONSTRUCTED IN RELIANCE ON 1993 PLAN AND PERMITS

*With annotations supplied by Francis J. Slavin, P.C.



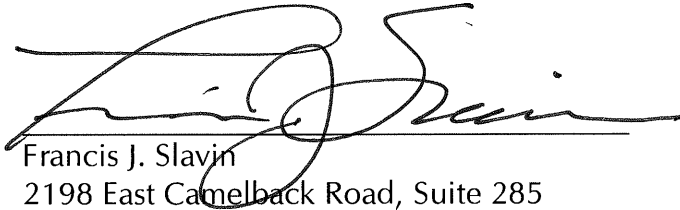
VII. CONCLUSION

Son Silver West Gallery respectfully requests a favorable determination by the Board of Adjustment upholding the authorized and official December 21, 2011 Decision of former Sedona Community Development Director John O' Brien, acting as the Zoning Administrator, which found the current uses, buildings, and structures on the Son Silver West Property to be in compliance with the 1992 CUP, Alternative Site Plan #2, plan and permit approvals issued by the City of Sedona to the Robsons, and the Sedona Land Development Code. Since the December 21, 2011 Decision, the Son Silver West Property has remained unchanged, and the Robsons have relied upon that Decision to substantially invest in their business and future at this location. To allow a different decision 4 years later by current Director Juhlin purportedly overturning a prior Director's determination of compliance and attempting to circumvent the Robson's vested rights in certain uses,

buildings and structures on the Son Silver West Property would be contrary to law and result in a serious injustice to the Robsons.

RESPECTFULLY SUBMITTED this 25th day of November, 2015.

FRANCIS J. SLAVIN, P.C.

A handwritten signature in black ink, appearing to read "Francis J. Slavin", written over a horizontal line.

Francis J. Slavin
2198 East Camelback Road, Suite 285
Phoenix, Arizona 85016
*Counsel for Son Silver West Galley, Inc.,
Robson Design,
Rio Cody Robson,
William B. Robson and Linda Rose Robson, and
William B. Robson and Linda Rose Robson,
as Trustees of the William B. Robson Living Trust dated
July 12, 1999 and
as Trustees of the William B. Robson Living Trust dated
July 12, 1999*

7.

THIS IS TO CERTIFY THAT THE
SURVEY & SUBDIVISION OF THE PREMISES
DESCRIBED & PLATTED HEREON
WAS MADE BY ME DURING DECEMBER
1934.

Chas. M. Etker
FIELD ENGINEER
REGISTERED ENGINEER
SEDONA, ARIZONA.

NO 8284 FEB 5 1935

STATE OF ARIZONA
COUNTY OF COCHISE

I HEREBY CERTIFY THAT THE
WITHIN INSTRUMENT WAS FILED AND
RECORDED AT REQUEST OF FRANK
K. BRADLEY, THIS 9 DAY OF
JANUARY, 1935, AT 3:28 P.M.
MOST IN BOOK 2 ON MAPS
AND PLATS, AT PAGE 71

WITNESS MY HAND & OFFICIAL SEAL
THE DAY & YEAR ABOVE WRITTEN

Charles M. Etker
COUNTY RECORDER

DEPUTY RECORDER

Mrs.
HEREAS IS BY Minister and is Approximately 1400

No. **6863**
RECORDED AT REQUEST OF **F. M. Gold**
July 21st A. D. 1955 At 9:15 o'clock A.M.
in Book **77 Official Recs** Pages **509-512**
Records of Coconino County, Ariz.
Edna Mae Thornton County Recorder
By **Edna S. Bradupp** Deputy

BROKEN ARROW SUBDIVISION

SEDONA, ARIZONA

FRANK E. BRADLEY and ANN BRADLEY
husband and wife, OWNERS

KNOW ALL MEN BY THESE PRESENTS: that **FRANK E. BRADLEY and ANN BRADLEY**, husband and wife, being owners of:

Broken Arrow Subdivision, Tracts 38 to 61 inclusive, a subdivision located in and being a part of the $S\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18 and N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, Township 17 North, Range 6 East, G&S.R.B.&M. Coconino County, Arizona, according to the plat of record in the office of the County Recorder of Coconino County, Arizona, in Book 2, of Maps page 71 Official Records of said County and State

hereby declare the following restrictions shall apply to all tracts in said subdivision:

1. That said Tracts shall be used for single family dwelling house purposes only, excepting business Tracts hereinafter specified.
2. That no dwelling house shall be erected which contains less than 1000 square feet of ground floor area, and no guest house containing less than 750 square feet of ground floor area, exclusive of such part of a building either attached or not, used for a garage, also exclusive of porches or patios: and no residence shall be built more than two stories in height: nor more than one (1) residence and 1 guest house be built on one (1) Tract. Construction of all houses to be masonry, flagstone, adobe, cinder block stuccoed or rock veneered, and all buildings to be completed within six months after construction is started.
3. The lines of the walls nearest the front property line of any dwelling house or any garage incident thereto, built on any Tract or portion thereof, shall be not less than 10 feet from the front property line, and the side walls thereof shall not be closer than 5 feet from the side property line, and not closer than 10 feet from

the side property line if such property line is on a street, excepting however, any garage detached from the main building, which may be placed on either side or back property line.

4. No building or structure or house or trailer of any nature, detached from the main building either temporary or permanent, shall be built, erected, placed or maintained on any Tract, except a garage, limited to a two-car garage with or without servants' quarters attached, but such servants' quarters shall only be used by servants, and further, only by such servants who are employed on the premises where such quarters are located. No garage shall be commenced or erected on any tract until construction of the main building on such tract, complying with these restrictions, shall be started or contracted for with a responsible contractor approved by the Grantors. This paragraph shall not apply to any temporary building used for storage or watchman during the progress of construction continuously prosecuted.

5. No part of said Tracts shall be used as a hospital or sanitarium or other place for hire, for the care or entertainment of persons suffering from any disease or disability whatsoever.

6. No livestock or poultry shall be kept on said Tracts.

7. No business shall be conducted on any residential tract and no intoxicating liquor shall be sold on residential tracts. That intoxicating liquor may be sold on business tracts upon the approval of the Grantors. Improvements on all business Tracts may be constructed up to the front and within 2 feet of Tract line.

8. That no use shall be made of any Tract that will constitute a nuisance, or injure the value of neighboring tracts and no spite fence or other structure shall ever be erected.

9. The foregoing restrictions and covenants run with the

land and shall be binding on all owners of said Tracts and all persons claiming under them until January 1, 1966, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a majority of the then owners of the Tracts, it is agreed to change the said covenants in whole or in part.

10. No outside toilets shall be erected on the premises except during preliminary construction of living accommodations.

11. Trailer houses may be placed on said tracts if housed in a garage or other similar building, not to be exposed openly and not to be used as a dwelling unit after the dwelling house on said tracts or Tract is completed.

12. No Tract or Tracts shall be split and no part or parts of a Tract shall be sold.

13. The business district shall be confined to those Tracts numbered 38 to 44 inclusive, fronting on Sedona Rimrock Highway.

If there shall be a violation or threatened or attempted violation of any of said restrictions, it shall be lawful for any other person or persons owning any of said Tracts in this subdivision to prosecute any proceeding at law or in equity against the person of said restrictions, and to either restrain or enjoin such violation or to recover damages or other dues for such violation.

Should any of the restrictions herein contained be held to be invalid or void, such invalidation or voidence of any such restrictions shall in no way affect the validity of the rest of the restrictions.

77-512

IN WITNESS WHEREOF, FRANK E. BRADLEY and ANN BRADLEY,
have hereunto set their hands the 8 day of July 1955.

(Signed)

Frank E. Bradley
Frank E. Bradley

Ann Bradley
Ann Bradley

STATE OF ARIZONA :
: ss
COUNTY OF COCONINO :

This instrument was acknowledged before me this 8 day
of July 1955 by Frank E. Bradley and Ann Bradley.



(Signed)

J. M. G. L.

My Commission expires:

May 9, 1958



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
FAX (602) 282-7207

SUMMARY SHEET
SON SILVER WEST GALLERY

CASE NUMBER: CUP 92-3

MEETING DATE: September 15, 1992

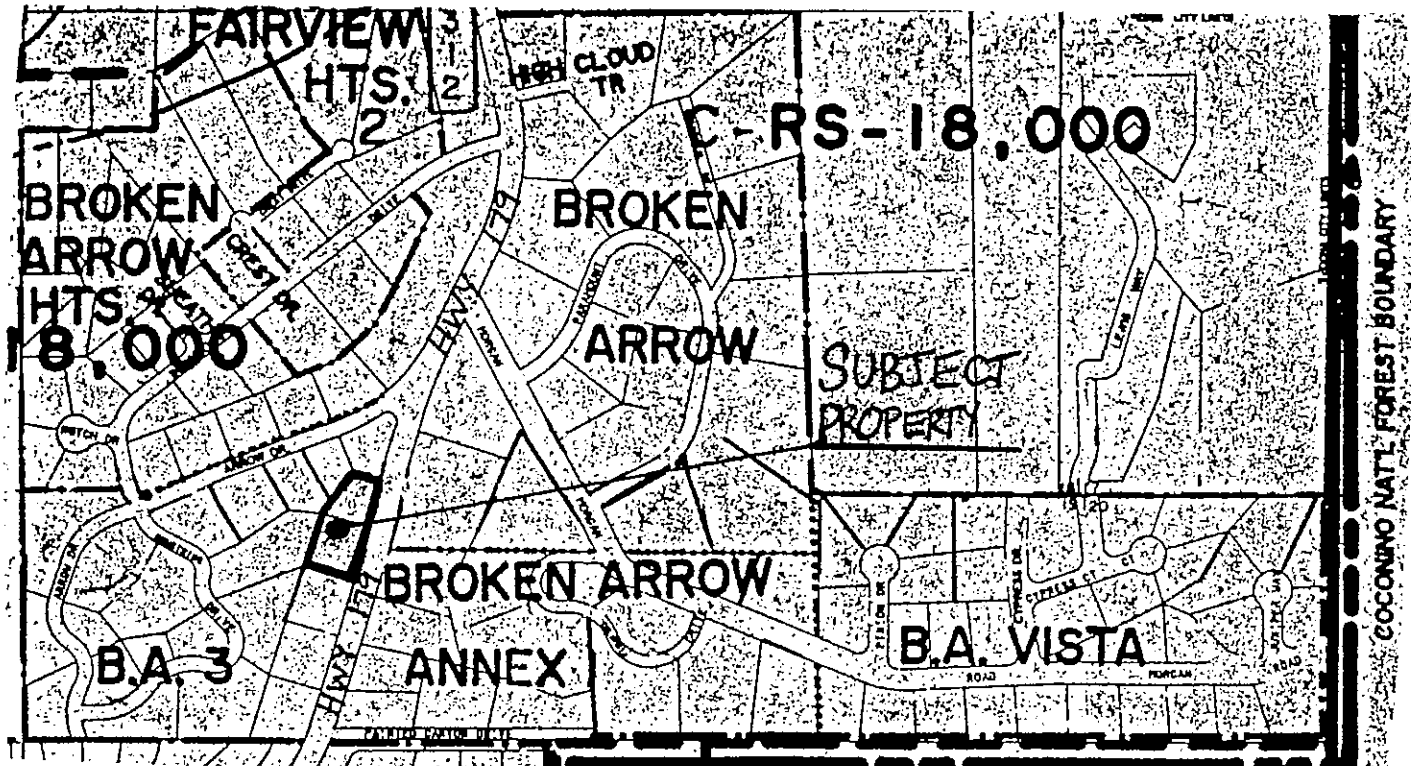
APPLICANT: William and Linda Rose Robson
Son Silver West Gallery

PROPOSAL: Request for approval of a conditional use permit (CUP) to allow for continued use of an expansion of a nonconforming business in a residential zone. Construction of a 17-space parking lot is also proposed.

LOCATION: Along the west side of Highway 179 approximately two hundred (200) feet south of the Highway 179/Arrow Drive intersection. The subject site is identified as Assessor's Parcel Numbers 401-31-012 and 013.

SITE SIZE: .83 acres

CURRENT ZONING: C-RS-18,000 (Residential: Single-family)



Summary Sheet
Son Silver West Gallery
September 15, 1992, Page two

<u>AREA LAND USES</u>	<u>AREA ZONING</u>
North: real estate and dentist offices	C-RS-18,000 (Residential: Single-family)
South: vacant	same
East: vacant	same
West: single-family residences	same

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
FAX (602) 282-7207

STAFF REPORT

TO: Planning and Zoning Commission
THROUGH: ^{T S} Tom Schafer, Director of Community Development
FROM: John O'Brien, Associate Planner *JOB*
Department of Community Development
MEETING DATE: September 15, 1992
APPLICANTS: William and Linda Rose Robson
Son Silver West Gallery
CASE NUMBER: CUP 92-3

BACKGROUND

The Son Silver West Gallery, located on Highway 179 in Sedona, was originally constructed in 1960 and operated under the name La Galleria. Zoning in Coconino County was initiated in 1964. The subject property was subsequently placed in the C-RS-18,000 (Single-family Residential) zone classification along with other properties in the Broken Arrow Heights subdivision in which it is located. The gallery and its primary structures has thus operated on a legal nonconforming basis since 1964. Since that time the property has undergone several changes including the construction of a pottery shop/kiln building, workshop/storage space and establishment of outside display areas.

The City of Sedona and the current property owners disagree about the legal establishment of the large outside display area associated with the business as well as other associated uses on the southern one-half portion of the subject property.

The applicants contend that the five thousand (5,000) square foot area now used for outside retail display purposes was also similarly used by the previous owner, and thus, also enjoys a nonconforming or "grandfather" status. The applicants have also stated that since 1981, the year they purchased the property, the outside display area has remained essentially unchanged, notwithstanding the landscape improvements performed on site. The applicants assert that they have not enlarged or expanded any of the outside display areas on the property over the past several years.

The City of Sedona disagrees.

Staff Report
Son Silver West Gallery
September 15, 1992, Page 2

Coconino County Assessor's office records indicate that the display area property was assessed as vacant land as recently as 1986. The County Planning Department has further indicated that the parcel now used for outside display and sales was not being utilized for display purposes in 1986. After City inspection of the property in May of 1989, the applicant was cited for a Zoning Ordinance violation regarding the expansion of a nonconforming use (the gallery) without compliance with applicable City Ordinance requirements.

This discrepancy of position can only be resolved in one of several ways. One would be to take the issue to court as an enforcement action. Alternately, the property owners can exercise legally available avenues of administrative relief and seek approval at public hearings. The applicant did attempt to exercise this second alternative twice in 1991. A zone change request from C-RS-18,000 to C-CG-10,000 (Commercial-General) and C-P (Parking) was filed in December, 1990, but was withdrawn by the applicant on February 5, 1991, the date the Planning and Zoning Commission was to consider the request. Subsequently, on February 7, 1991, the applicant filed a conditional use permit request to allow for the expansion of a nonconforming use, including the construction of a 12-space parking lot on the southern one-quarter of the site. The request was considered by the Commission on March 5, 1991. Public comment was taken at the hearing and the item was continued to the March 19, 1991, meeting. However, the applicant again withdrew the application the day of the hearing. The reason given for the withdrawal was that the Arizona Department of Transportation was requiring the applicant to construct a left-hand turn lane on Highway 179 for the proposed 12-space parking lot for north-bound traffic. The applicant needed time to evaluate the costs associated with Arizona Department of Transportation's (ADOT's) requirement and also to explore alternatives which might be implemented in lieu of the turn lane.

On March 11, 1992, the applicant again filed a similar conditional use permit request to allow for the expansion of a nonconforming use. This request attempts to bring a long established nonconforming retail use in a single family residential zone and disputed expansions which have occurred in recent years into compliance with current City zoning requirements.

On July 7, 1992, the Commission continued case number CUP 92-3 to September 15, 1992, to allow time for the applicant to hire a traffic engineering specialist, conduct a traffic impact study and revise the site plan. On August 18, 1992, the applicant submitted the traffic impact study and two alternative site plans.

Alternative site plan #1 shows a 47-foot wide two-way driveway and three parking spaces in front of the existing building. A 17-space parking lot is shown on the southern one-fourth of the property with one-way traffic flow provided by two curb cuts on Highway 179.

Alternative site plan #2 shows a 30-foot wide one-way drive, with no parking in front of the building. This drive would access the new 17 space lot on the southern one-fourth of the property. The new parking lot would also be accessed the same as site plan #1.

Both plans discuss expansion and shifting of the existing outside display area. Several trees will probably have to be removed if either site plan was implemented.

No Highway 179 improvements are proposed in either case.

SITE CHARACTERISTICS

- .83 acres
- physical improvements include:
 - 2,250 square feet of retail space in enclosed buildings
 - 5,000 square feet of outside retail display area
 - 1,950 square foot single family dwelling
 - 1,300 square foot pottery shop with kiln
 - 590 square feet of storage space
 - 750 square foot workshop
 - sculpture (to be relocated)
 - 2 freestanding signs
- current building coverage approximately 17%
- parking located between gallery and Highway 179

DEVELOPMENT PROPOSAL

- conditional use permit requested to allow for expansion of nonconforming use
- if approved, would allow for continued use of 5,000 square foot outside sales/display area with minor modifications, and construction of 17-space parking lot on southern one-fourth of property

Access

- Highway 179 for existing and proposed parking areas

Parking

- as previously discussed in report

Grading/Drainage

- grading for new parking lot
- existing minor drainageway culverted and filled

Wastewater Disposal

- no alterations to existing septic system

Signage

- parking lot identification signs only
- unlit, wood construction

Outside Lighting

- existing lighting
 - signage floodlights
 - security floodlights
 - mercury vapor pole in outside display area
- no new lighting proposed

Vegetation/Landscaping

- several existing trees may have to be removed
- no landscaping information provided

Outside Display Area/Screening Requirements

- Section 211.08 (Open Air Business) of Interim Zoning Ordinance requires screening of outside display areas.
- wooden fencing/living and dead ocotillo cactus proposed for screening, similar to existing screening on west boundary of display area

COMMENTS AND CONCERNS

Community Development

- 34 parking spaces are required; 17-20 are provided. Applicant's parking proposal, although not in compliance with Ordinance requirements, represents an improvement over a less than ideal existing situation. Planning and Zoning Commission has authority to waive parking requirements under a CUP approval.
- New parking lot must be screened from the residentially zoned property immediately to the south. Staff suggests fencing and/or landscaping.
- Existing mercury vapor light should be changed to sodium type and properly shielded.
- The new parking lot should be designed around existing trees so that they are minimally affected by the proposed improvements

Engineering Department

- agrees with ADOT regarding the need for improvements to Highway 179
- could support alternative #2 if Highway 179 improvements were included
- could not support alternative #1

Police Department

- numerous left-turn related accidents have occurred at this location caused by northbound Highway 179 traffic turning into existing parking area; addition of new parking area will aggravate existing potentially dangerous left-turn situation
- sight distance from new parking lot to the south on Highway 179 is inadequate

Arizona Department of Transportation (ADOT)

- traffic impact study does not demonstrate the need for three driveways; only one driveway is needed for a development of this size
- widening of Highway 179 to provide a left-hand turn lane for north-bound traffic and a deceleration lane for southbound traffic is strongly recommended

ANALYSIS

Staff's review focused on:

Compliance with Ordinance and Reviewing Agency Requirements

The proposal is not in compliance with the Parking Ordinance, but does provide substantially more on-site parking than what currently exists. However, access to the parking area is a major safety concern of City staff and ADOT.

Consistency with Community Plan

Consistent as follows:

- designated as commercial on land use map
- compatible with existing topography, vegetation and scenic vistas
- retain and encourage commercial uses which respect existing positive characteristics of the city and its natural environment, and are compatible with adjacent uses

Inconsistent as follows:

- as proposed, adequate site access mitigation measures (left-turn lane and restricted access) have not been provided to the satisfaction of City staff and ADOT

Compliance with Conditional Use Permit Requirements

Conditional use permit is required for expansions of nonconforming uses and outside sales/display areas. If adequately conditioned to address safety concerns of City staff and ADOT, staff does not find the CUP request inconsistent with findings set forth in Section 208.07 of the Interim Zoning Ordinance.

RECOMMENDATION

The current use of the southern one-half of the subject property, specifically the 5,000 square foot outside sales/display area has been the subject of City zoning enforcement actions for approximately three years. In the spirit of trying to achieve voluntary compliance with ordinance requirements wherever possible, City staff has exercised great patience and tolerance with the owners of Son Silver West to achieve a reasonable solution to the alleged violations alternative to Court enforcement.

The applicant is pursuing an avenue of administrative relief (CUP request) which, if approved, would allow for the continued use of the disputed display area and the construction of a new parking area. Staff supports this approach contingent upon the provision of access to the site in a manner that addresses the safety concerns of the City Engineering and Police Departments, as well as the requirements of the Arizona Department of Transportation. **Staff therefore recommends approval of case number CUP 92-3 (site plan #2) based on substantial compliance with Ordinance requirements, applicable sections of the Community Plan and conditional use permit findings and subject to the following conditions of approval:**

1. Highway 179 shall be improved as specifically required by the Arizona Department of Transportation.
2. Encroachment permits shall be obtained from ADOT for all Highway 179 improvements.
3. All ADOT required improvements to Highway 179 shall be completed to the specifications of ADOT and improvements to the new on-site parking area to the specifications of the City Engineer within one year of conditional use permit approval. The new parking area shall not be utilized for customer or employee parking until all above-referenced improvements are satisfactorily completed.
4. Prior to grading permit issuance, grading and drainage plans for the proposed changes to the drainage path on the property shall be approved by the City Engineer.
5. The outside sales/display area shall be completely enclosed and screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.
6. The parking lot directional sign shall be installed in accordance with the City's Sign Regulations and shall be consistent with the design theme of the other wood signs at the gallery.
7. The existing mercury vapor light located in the display area shall be changed to a sodium type and shielded so the illumination is confined to the subject property boundaries.
8. All other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.

Staff Report
Son Silver West Gallery
September 15, 1992, Page 8

9. Adequate screening of the parking lot along the southern boundary of the subject property shall be provided to the specifications of the Director of Community Development.
10. Existing trees located within the proposed parking area shall not be removed and shall be incorporated into the new parking lot.

February 2, 1990

Mr. Tom Schafer
Community Development Director
City of Sedona
P. O. Box 30002
Sedona, Arizona 86336

(hand delivered)

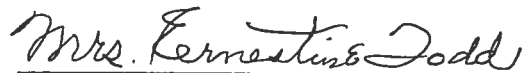
Re: **Son Silver West Gallery Land Use**

Dear Mr. Schafer:

In accordance with the request of Mr. and Mrs. Robson, the current owners and operators of the Sun Silver West Gallery, this letter is provided to describe the character of the business which existed at the La Galleria Art Gallery prior to my selling it to Mr. and Mrs. Robson. During my ownership of La Galleria, I also conducted the outdoor display of pottery, chimes, chilies, and southwestern art-and-craft items.

I have been familiar with the Sedona area for in excess of 25 years. The outdoor display area and gallery presently maintained by the Robsons is compatible with that which was done at that location in my previous business.

Sincerely,



Ms. Ernestine Todd
Previous Owner

cc: John J. Dempsey; Aspey, Watkins & Diesel
Mr. and Mrs. Robson; Sun Silver West Gallery, Inc.

STATE OF ARIZONA } ss
COUNTY OF COCONINO

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT
WAS FILED FOR RECORD IN COCONINO COUNTY,
STATE OF ARIZONA.

FEE NO.

1237 5.00

DOCKET 820 PAGE 872

DATE: JAN 20 1981 -3 50

REQUEST OF: FIRST AMERICAN TITLE INS. CO. OF AZ.

WITNESS MY HAND AND OFFICIAL SEAL.

BY Blanche Berreman
DEPUTY

HELEN I. HUDGENS
COCONINO COUNTY RECORDER

Witness my hand and official seal.

County Recorder

By

Deputy Recorder



When recorded, mail to

William Robson
P.O. Box 617
Sedona, Az 86336

Order No. 02-038343

JOINT TENANCY DEED

For the consideration of Ten and NO/100 Dollars, and other valuable considerations, I or we,

MARY ERNESTINE NESTLER TODD, a married woman dealing with her sole and
separate property, aka Mary Ernestine Nestler the GRANTORS

do hereby convey to

WILLIAM ROBSON and LINDA ROBSON, husband and wife

the GRANTEEES

not as tenants in common and not as a community property estate, but as joint tenants with right of survivorship,

the following described real property situate in Coconino County, Arizona.

TRACT 42, BROKEN ARROW SUBDIVISION, as shown on plat recorded in Book 2, Page 71,
records of Coconino County, Arizona.

EXCEPTING and RESERVING unto the United State pursuant to the provision of the Act of
August 1, 1946 (Stat 755) all uranium, thorium, or any other material which is or may
be determined to be peculiarly essential to the production of fissioanble material whether
or not of commercial value, as set forth in the Patent to said land.

SUBJECT TO: Existing taxes, assessments, liens, encumbrances, covenants, conditions,
restrictions, rights of way and easements of record.

And the Grantor...do...warrant the title against all persons whomsoever, subject to the matters above
set forth.

The grantees by signing the acceptance below evidence their intention to acquire said premises as joint
tenants with the right of survivorship, and not as community property or as tenants in common.

Dated this 16th day of January, 1981

Accepted and approved:

William Robson
WILLIAM ROBSON

Linda Robson
LINDA ROBSON

Mary Ernestine Nestler Todd
MARY ERNESTINE NESTLER TODD
aka Mary Ernestine Nestler

STATE OF ARIZONA } ss.
County of Coconino

My Commission Expires Aug. 27, 1983

My commission expires:

STATE OF ARIZONA } ss.
County of Coconino

My Commission Expires Aug. 27, 1983

My commission expires:

FATCOA 6052 (Rev. 9/79)

This instrument was acknowledged before me this

19th day of January, 1981 by
William Robson and Linda Robson

Joey Kidney
Notary Public

This instrument was acknowledged before me this

19th day of January, 1981 by
Mary Ernestine Nestler Todd
aka Mary Ernestine Nestler

Joey Kidney
Notary Public

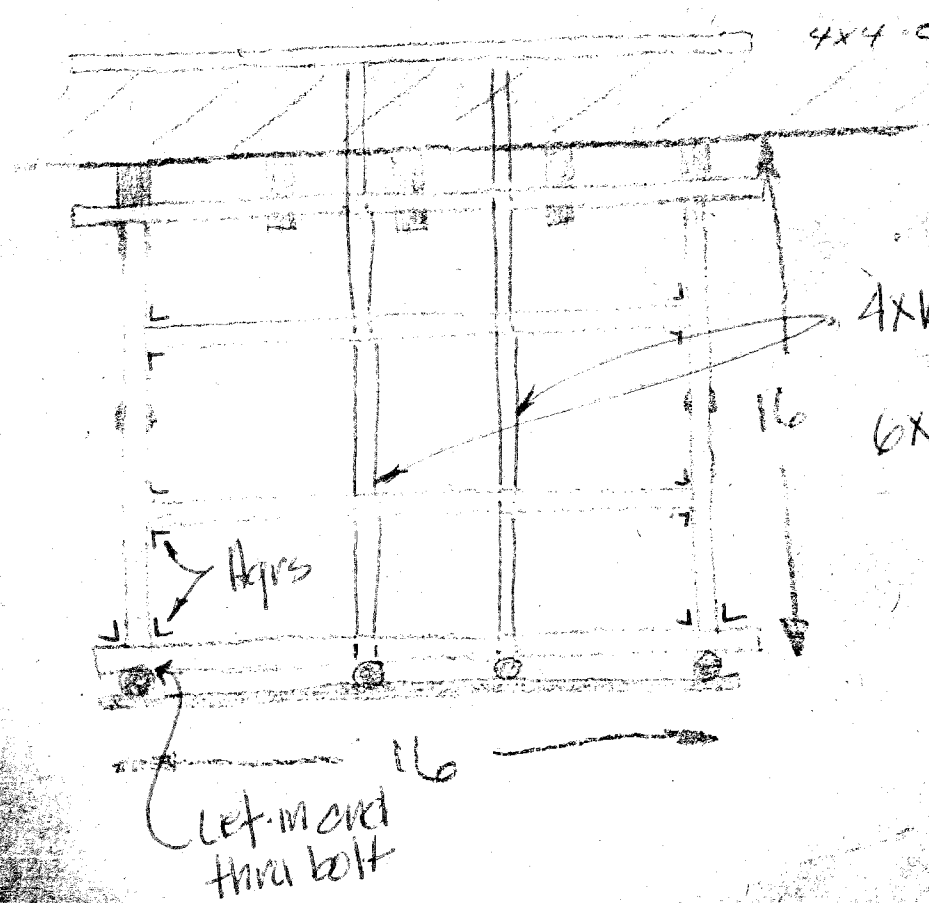
DOCKET 820 PAGE 872

San Silver West

Galley
Chile Crags

282-3380

TOP VIEW BEAM STRUCTURE
(4x4)



4x4 CLEAR STORY
ON ROOF

4x10 D.F. #2 ✓
OR
6x8 D.F. #2 ✓

Let in and
thru bolt

Let in to post
each pin

APPROVED

This set of plans and specifications MUST be at job site during construction. It is not to be altered or to deviate from the original design.

The signing of the plans is a statement of approval of any provisions of the plans.

City of _____ DATE 8/16/97

BUILDING ENGINEERING _____ DATE _____

PLANNING/DESIGN _____ DATE _____

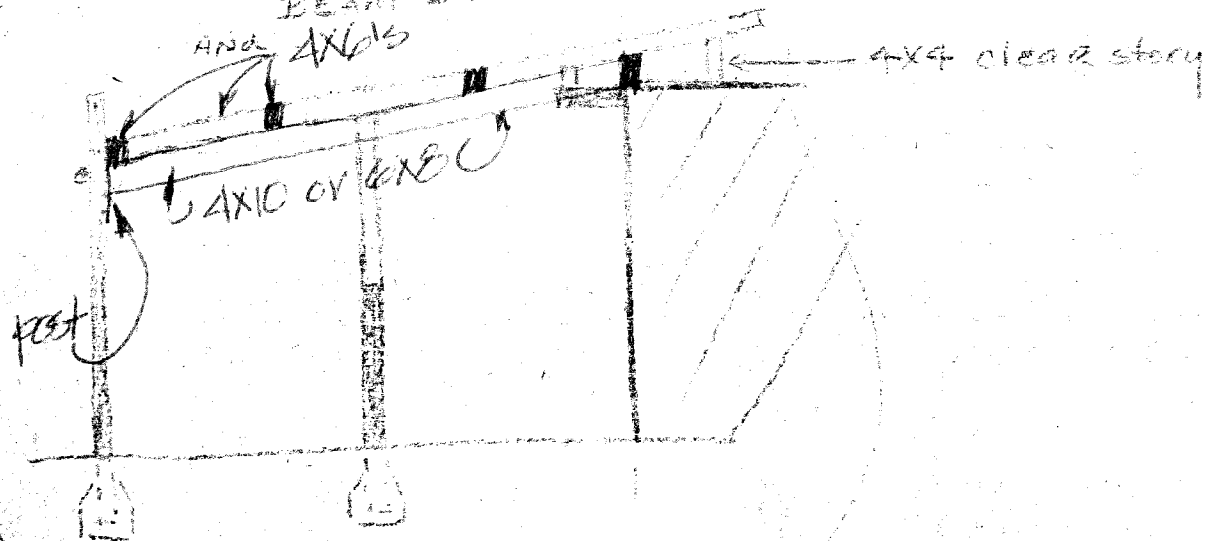
FLUID CONTROL _____ DATE _____

FIRE DISTRICT _____ DATE _____

BUREAU OF SAFETY DIVISION

CHICAGO

SIDE VIEW
BEAM STRUCTURE
AND 4x10



2x4
plates
on
top of

rafters
for
ripple
moulding

16"

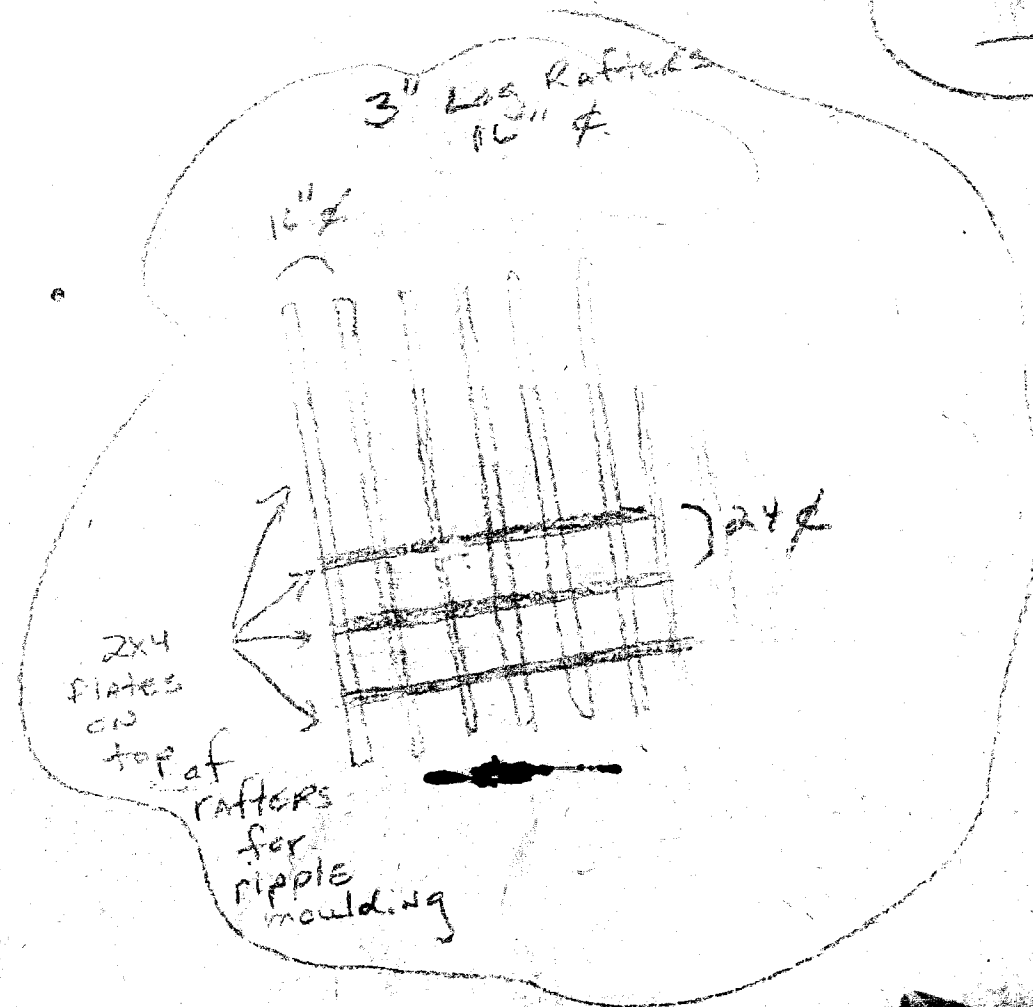
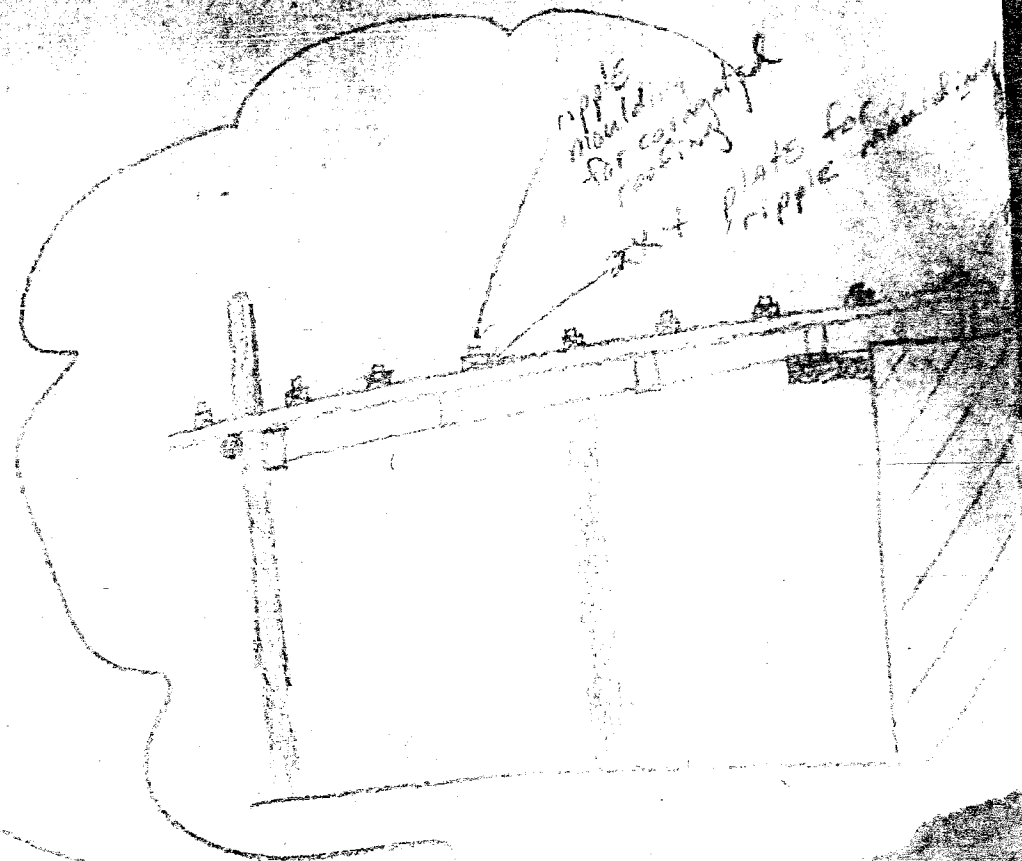


EXHIBIT “6”

DUPLICATE EXHIBIT PLEASE SEE EXHIBIT “3”

**Staff Report to P&Z Commission
September 15, 1992
Case No. CUP 92-3**

RESOLUTION NO. 2015-20

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, ADOPTING AN "OFFICIAL CITY OF SEDONA VISION".

WHEREAS, a vision statement for the City of Sedona was created as part of the original 1991 Community Plan; and

WHEREAS, this vision statement was carried over to the 1998 and 2002 versions of the Community Plan; and

WHEREAS, this statement was eliminated and a chapter entitled "Vision" was created when the Community Plan was updated in 2014; and

WHEREAS, the original 1991 vision statement is less specific and was written in a more poetic fashion; and

WHEREAS, the 1991 vision statement is still relevant and holds true today; and

WHEREAS, the 1991 vision statement would not compete with nor diminish the importance and value of the Vision Chapter of the Community Plan.


NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA:

That the City of Sedona, by and through the Sedona City Council, adopts the vision as shown on Exhibit A as the "Official City of Sedona Vision".

APPROVED AND ADOPTED by the Mayor and City Council of the City of Sedona, Arizona this 28th day of July, 2015.


Sandra J. Moriarty, Mayor

ATTEST:


Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

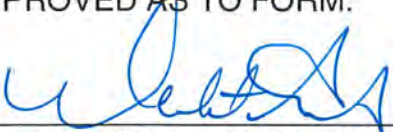

Robert L. Pickels, Jr. City Attorney

Exhibit A
Official City of Sedona
Vision

- To be a City that is constantly vigilant over the preservation of its natural beauty, scenic vistas, pristine environment, and cultural heritage.
- To be a City that retains its small-town character and creates its manmade improvements in strict harmony with nature.
- To be a City that is animated by the arts, and lives with a spirit of volunteerism to help achieve our common goals.
- To be a City that offers equal opportunities for all and fosters a sense of community.
- To be a City that welcomes and accommodates all of its visitors and future residents with a spirit of fellowship.
- To be a City that retains and enhances a strong and vital economy which preserves existing lifestyles without exploiting the natural beauty.
- To be a City that lives up to the challenges of proper stewardship of one of the earth's great treasures.

VOTE:

SIX VOTES IN FAVOR, ~~NONE~~ OPPOSED -- MOTION UNANIMOUSLY
CARRIED.

AGENDA ITEM NUMBER SEVEN WAS CONDUCTED AS A PUBLIC HEARING

7. DISCUSSION/POSSIBLE ACTION REGARDING A REQUEST FOR A
CONDITIONAL USE PERMIT (CUP) TO ALLOW FOR THE EXPANSION OF A
NON-CONFORMING USE (THE SON SILVER WEST GALLERY) AND TO ALLOW
FOR OUTSIDE SALES AND DISPLAY ITEMS. IN ADDITION TO THE
OUTSIDE SALES AND DISPLAY AREA, THE CONSTRUCTION OF A CUSTOMER
PARKING LOT IS ALSO REQUESTED.

Applicant: William and Linda Rose Robson
Son Silver West Gallery

Case Number: CUP 92-3

THE SUBJECT PROPERTY IS LOCATED ALONG THE WEST SIDE OF SR 179
APPROXIMATELY TWO HUNDRED (200') FEET SOUTH OF THE SR 179/
ARROW DRIVE INTERSECTION. THE SUBJECT SITE IS IDENTIFIED AS
ASSESSOR'S PARCEL NUMBERS 401-31-012 AND 013.

Vice-Chair McAllister declared a Conflict of Interest and left
the dais.

Staff's Presentation

Staff -- Mr. O'Brien:

- Summarized the request, as well as the background, history, and previous levels of review, as outlined in Staff's Report to the Commission dated September 15, 1992 (attached to original minutes).
- Staff addressed comments and concerns of the Commission from the Commissions Study Session of September 10, 1992.
- Staff recommended approval.
- Two alternative site plans have been submitted for consideration.

Discussion -- Commission and Staff:

- Current parking requirements won't be met if alternate #2 is completely adhered to.
 - Staff felt the property was being made less deficient and closer to compliance.

- Previous public comment, pro and con, since 1991, has been substantial and should be considered.
 - Pro: 3 letters and a petition with 260 signatures, substantially non-resident signatures (attached to original minutes).
 - Con: 22 letters from residents and a petition with 120 resident signatures (attached to original minutes).
- Correct Staff Report, change applicable wording to Broken Arrow instead of Broken Arrow Heights.
- Discussion regarding:
 - The relationship of parking to the usable space.
 - ADOT's role in the approval process relative to the jurisdiction of the Commission.

Staff:

- Staff recommendations could be changed by the Commission.

City Attorney:

- Would be concerned if a property was conditioned so that it couldn't perform because of being caught between two jurisdictions.

Discussion -- Commission and Staff:

- ADOT has jurisdiction over the state highway.
 - ADOT's position has not changed since the Commission's last hearing on July 7th.
 - Letter from ADOT dated August 26, 1992 (attached to original minutes).
 - A left-turn lane isn't required, but is strongly encouraged.
- Discussion regarding the relationship between parking needs and retail square footage needs.
 - The Commission could waive or enforce parking requirements.
- Explanation of Staff's methodology used to determine parking specifications and recommendations.

-- Ramifications of the ratios used.

- Concern expressed regarding the calculation of square footage based on the outside display area relative to the site plan distributed this evening for Commission consideration.
- Further concern regarding the discrepancies between the maps, the current proposals, and the dates on the various plans.

-- No indication of changes has been made from the Commission's previous hearing.

- Staff's report contains no reference to the existing parking and graveled area occurring across the street.

-- The area isn't a legally established parking area.

Applicant's Presentation

Mr. Jack Dempsey, Applicant's Attorney:

- The issue isn't expansion; it's preservation. Nothing will be expanded under the Conditional Use Permit.
- Issues of expansion and the closure of a business are not being considered. A lot of misunderstanding follows the project. The Commission isn't conducting a full public hearing.
- Explanation of CC&R provisions relative to use of the subject property.

-- Designated as business lots in 1955.

- Explanation of the history of the business, the perception surrounding the history, and previous procedural approvals granted by the County and City.
- Concerned with the timing of the requirements by the City relative to ADOT improvements.
- Re-zoning versus a Conditional Use Permit.

Discussion -- Commission and Mr. Dempsey:

- Three hundred plus signatures were obtained on a petition supporting issuance of a Conditional Use Permit.
- Expansion of the property, if any, took place in the 1960's and 1960's, prior to Incorporation.

- Coconino County Assessor records erroneously show the property as vacant in 1986.
- Discussion and explanation regarding the City's code enforcement efforts relative to the subject property.
- In 1989 the City issued a citation for expansion.
- The request for a Conditional Use Permit would grant administrative relief.
- Neither the plat nor the CC&R's have been amended since their recordation in 1955.
- Concern expressed regarding the existing family residence and the possibility of it being converted to additional commercial space.

Mr. Bill Robson, Applicant and Owner:

- The existing residence will always be a home; there will be no retail conversion.

THE PUBLIC HEARING WAS OPENED.

Frank Stobinski, 400 Fox Road -- Sedona, Arizona:

- Supported the Applicant's request.
- Employee of Son Silver West and resident of the City. The request should be approved for the sake of the employees working for the Applicants.

Stephen Stobinski, 378 Fox Road -- Sedona, Arizona:

- Supported the Applicant's request.
- Five year resident of the City; felt the subject property looked great.
- Suggested the Commission be fair and support the local business. Sales Tax revenues are generated by business.

Diane Harvey, 1355 Lee Mountain Road -- Sedona, Arizona:

- Registered written support for the Applicant's request; didn't orally address the Commission.

Chuck Bemas, 1569 East Ramar -- Riviera, Arizona:

- Questioned the Commission on the ongoing SR 179 Corridor Study relative to property owned adjacent to the subject property.

Recorder's Note: Steve Swanson, City Engineer, updated Mr. Bemas on the nature and results to date of the Study; further contacts for information were given.

Fred Dolinter (card not submitted for reference), Hohokom Circle -- Sedona, Arizona:

- Supported the Applicant's request.
- Fifteen year resident of Sedona.
- The gallery has been operating since 1977 and has been improved since the Robson's ownership.
- The gallery isn't the only SR 179 existing business.

Marc Avery, 930 Jordan Road -- Sedona, Arizona:

- Registered written support for the Applicant's request; didn't orally address the Commission.

Robert Shields (card not submitted for reference), Cathedral area -- Sedona, Arizona:

- Supported the Applicant's request.

Maleese Black, 324 Bowstring Drive -- Sedona, Arizona:

- Opposed to the request.
- Member of the Broken Arrow Homeowner's Association.
- The subdivision's developer didn't look to the future in designing and designating the lots as a business nature.
 - Correct the wrongs of the past, allow improvement to move forward.
- Existing traffic hazards and concerns are substantially greater than stated.
- The City should wait for completion of the SR 179 Corridor Study before making further traffic commitments to the area.

- The La Galleria had no outdoor display.

Bertha Longtin, 335 Bowstring Drive -- Sedona, Arizona:

- Registered written opposition for the Applicant's request; didn't orally address the Commission.

Katheryn Shrode, 238 Paramount, PO Box 1949 -- Sedona, Arizona:

- Opposed to the request.
- Expressed concern regarding the appearance of the subject property, existing traffic hazards, access issues, and increased traffic problems.

Bob Wilson, 38 Badger Drive -- Sedona, Arizona:

- Favored the Applicant's request.
- The Mexican appearance of the gallery looks nice.
- Suggested a fence be erected if the Commission endorsed alternate #2.
- Problems should be solved on the basis of existing problems of today; not the past.
- The property's history is irrelevant.
- Additional parking areas should be provided.

THE PUBLIC HEARING WAS CLOSED.

MOTION:

COMMISSIONER PEPPER MOVED THE COMMISSION ADJOURN TO AN EXECUTIVE SESSION TO OBTAIN LEGAL ADVICE AFTER A TEN-MINUTE RECESS. SECOND BY COMMISSIONER ROBERTS.

VOTE:

FIVE VOTES IN FAVOR, NONE OPPOSED -- MOTION UNANIMOUSLY CARRIED.

Recorder's Note: After a ten-minute recess, at about 8:00 p.m., the Commission adjourned to an Executive Session in the Director's Office, Department of Community Development.

The Commission returned to open session at 8:30 p.m.

City Attorney:

- Met in Executive Session to discuss concerns of the Commission and possible methods of mitigation through revisions to Staff recommended Conditions of Approval as well as additional Conditions.
- Under penalty of law, discussions during an Executive Session are confidential.

Discussion -- Commission:

- Suggestion that the Applicant consider lowering the park requirements by decreasing the outdoor display space and converting existing indoor residential space instead.
- Discussion regarding the ownership of the subject property, specifically the different owners of two individual lots, and the terms of the agreement allowing display.
 - The Applicant was willing to commit to never selling the subject property.
 - The use of the property runs with the land.
- Discussion regarding designation of the subject property in the Community Plan.
 - Existing commercial uses are intended to be reflected.
- The Applicant's rezoning application was withdrawn because increased commercial activities was not the intent.
- Issuance of a Conditional Use Permit shouldn't be construed as a municipal endorsement of commercial sprawling.
- Conditional Use Permits don't reflect changes in zoning or the Community Plan.
- Discussion regarding Staff's interpretation of Community Plan provisions relative to land-use boundaries.
- Discussion regarding the terms and provisions of the CC&R's.
 - The City cannot enforce CC&R's.

MOTION:

COMMISSIONER ROBERTS MOVED APPROVAL OF CASE NUMBER CUP 92-3, SITE PLAN #2, BASED ON SUBSTANTIAL COMPLIANCE WITH ORDINANCE REQUIREMENTS, APPLICABLE SECTIONS OF THE COMMUNITY PLAN, AND CONDITIONAL USE PERMIT FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL AS AMENDED (amendments are shown below).

Add a new Condition #1 and re-number accordingly. Number 1 to read:

1. Uses and physical improvements on the subject property shall not exceed those as characterized in Staff's Report dated September 15, 1992 and as shown on the site plan, and as reviewed and approved by the Planning and Zoning Commission.

Re-number original #1 to #2, and change to read:

2. The Applicant shall be responsible for Highway 179 improvements as specifically required by the Arizona Department of Transportation.

Re-number original #3 to #4, and delete the last sentence, to read:

4. All ADOT required improvements to Highway 179 shall be completed to the specifications of ADOT and improvements to the new on-site parking area to the specifications of the City Engineer within one year of Conditional Use Permit approval.

Re-number original #5 to #6, and change to read:

6. The outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.

Re-number original #10 to #11, and change to read:

11. Existing trees located within the proposed parking area shall be maintained and incorporated into the new parking lot. In the event a tree doesn't survive due to vehicular compaction, replacement with trees of a comparable size and height shall be required.

Add a new condition, to read:

12. Individual parcels shall be combined into one parcel.

SECOND BY COMMISSIONER GUNNING.

ROLL CALL VOTE:

FOUR VOTES IN FAVOR, ONE (SOBOLOFF) OPPOSED -- MOTION CARRIED.

Discussion:

- Though the Conditional Use Permit isn't an ideal solution to existing problems, the Commission should use its energies productively.

Vice-Chair McAllister returned to the dais.

***. REPORTS/ANNOUNCEMENTS -- REPORT FROM THE DIRECTOR ON APPEAL TO CITY COUNCIL REGARDING EL MUNDO MAGICO GALLERY (Continued from Agenda Item #4).**

Staff -- Mr. Schafer:

- Requested by Chairman Rawlins, September 10, 1992 memo (attached to original minutes) to answer questions relative to the determination by the Commission, and subsequent appeal to the Council, that a Public Hearing would be required for design review approval.

Recorder's Note: **Bulleted questions were posed by the Chairman in his memorandum -- Staff's response to the questions follow.**

- Article 17, Commission's Rules and Procedures. What instrument was being appealed?
 - No instrument was appealed; an action was appealed.
 - The Commission has the authority under design review provisions to decide whether a public hearing should be required or whether Staff should handle smaller projects.
 - The Ordinance provides for appeal of any decision on design review applications.
- Why was the Commission not advised of the appeal?
 - It's never been Staff's practice to advise of pending appeals.
 - Staff focus is on the party to whom the appeal is made to.
 - Staff could provide courtesy notification in the future.



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
T DD (602) 282-3113
FAX (602) 282-7207



September 21, 1992

William and Linda Rose Robson
Son Silver West Gallery
1476 Highway 179
Sedona, AZ 86336

RE: Case number CUP 92-3

Dear Mr. and Mrs. Robson:

On September 15, 1992, the Planning and Zoning Commission approved case number CUP 92-3 subject to the attached conditions of approval.

As the applicant in the above matter, your signature is required at the bottom of this letter confirming your agreement to comply with the attached conditions. Please sign and date in the space provided and return this letter and the conditions to the Department of Community Development as soon as possible.

Sincerely,

John P. O'Brien

John P. O'Brien, Associate Planner
Department of Community Development

Enclosure

CONFIRMATION

L. Rose

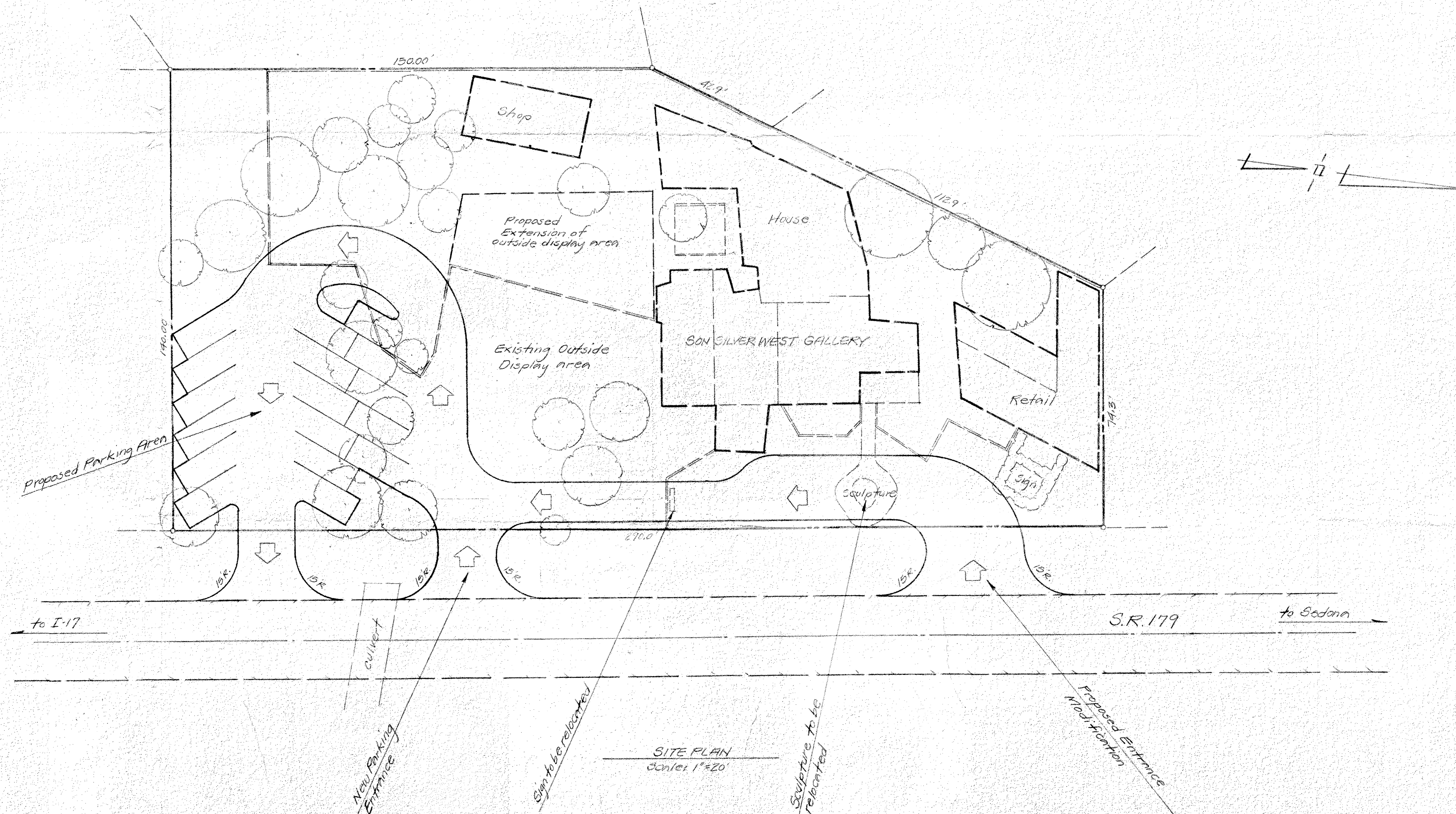
Applicant

October 20, 1992

Date

**CONDITIONS OF APPROVAL AS APPROVED BY THE
PLANNING AND ZONING COMMISSION FOR CASE NUMBER CUP 92-3
SON SILVER WEST GALLERY**

1. Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2).
2. The applicant shall be responsible for the provision of Highway 179 improvements as specifically required by the Arizona Department of Transportation.
3. Encroachment permits shall be obtained from ADOT for all Highway 179 improvements.
4. All ADOT required improvements to Highway 179 shall be completed to the specifications of ADOT and improvements to the new on-site parking area to the specifications of the City Engineer within one year of conditional use permit approval.
5. Prior to grading permit issuance, grading and drainage plans for the proposed changes to the drainage path on the property shall be approved by the City Engineer.
6. The outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.
7. The parking lot directional sign shall be installed in accordance with the City's Sign Regulations and shall be consistent with the design theme of the other wood signs at the gallery.
8. The existing mercury vapor light located in the display area shall be changed to a sodium type and shielded so the illumination is confined to the subject property boundaries.
9. All other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.
10. Adequate screening of the parking lot along the southern boundary of the subject property shall be provided to the specifications of the Director of Community Development.
11. Existing trees located within the proposed parking area shall be maintained and incorporated into the new parking lot. In the event such trees do not survive due to vehicular compaction, replacement with trees of a comparable size and type shall be required.
12. Individual parcels shall be combined into a single parcel and maintained under common ownership for purposes of operation and maintenance of the authorized uses.



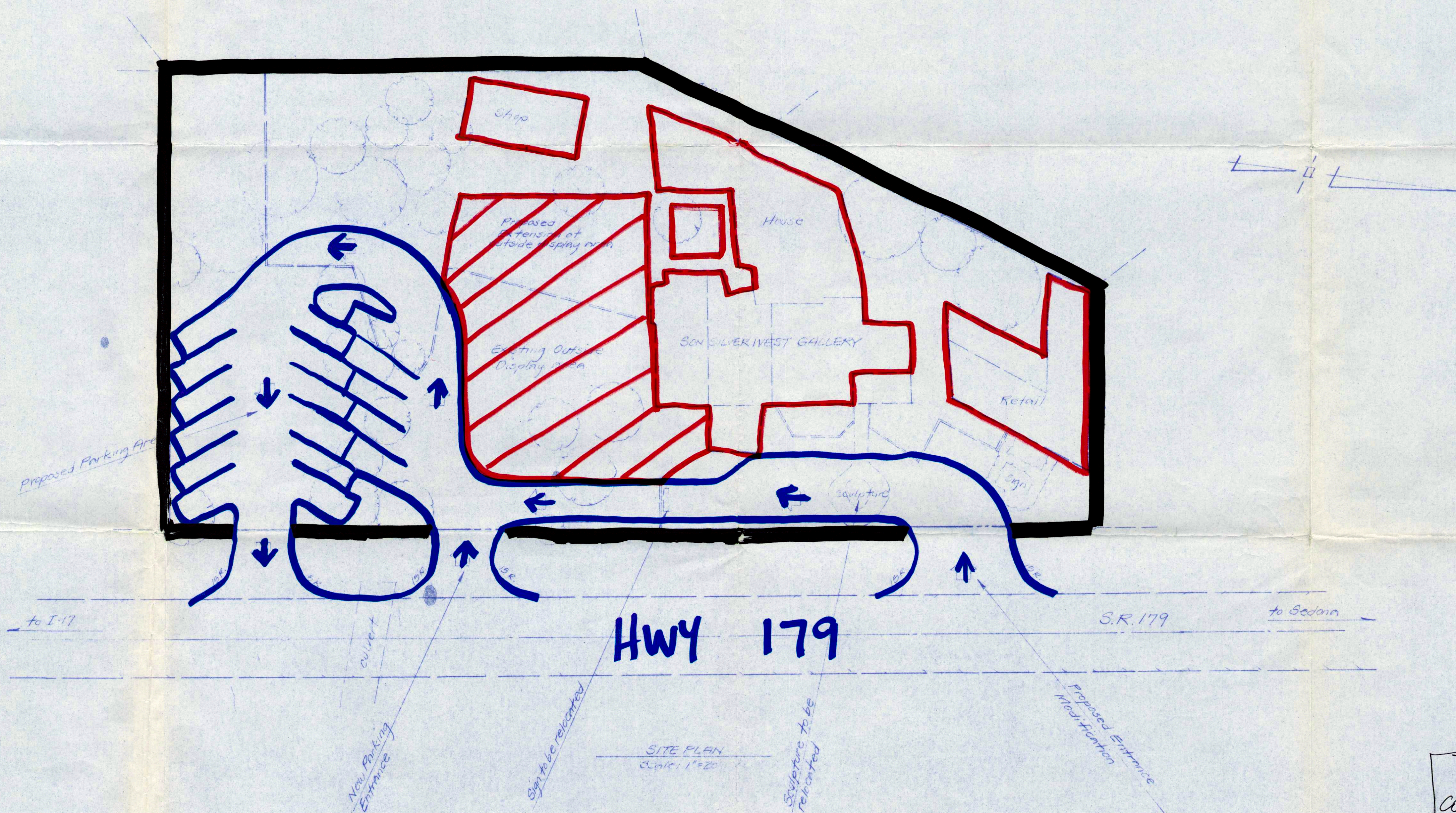
SHEPARD-WESNITZER, INC.
CONSULTING ENGINEERS
70 PAYNE PLACE SEDONA, ARIZONA
PHONE (602) 282-1061

PARKING LOT EXPANSION PLAN
AND ACCESS MODIFICATIONS
SON SILVER WEST GALLERY
COCONINO COUNTY
SEDONA, ARIZONA

LOG # 91038

SHEET	1	OF	1
DATE	4-4-92		
DRAWN	Dey		
CHECKED	[Signature]		
REVISED			

SCHEMATIC
NOT FOR CONSTRUCTION USE



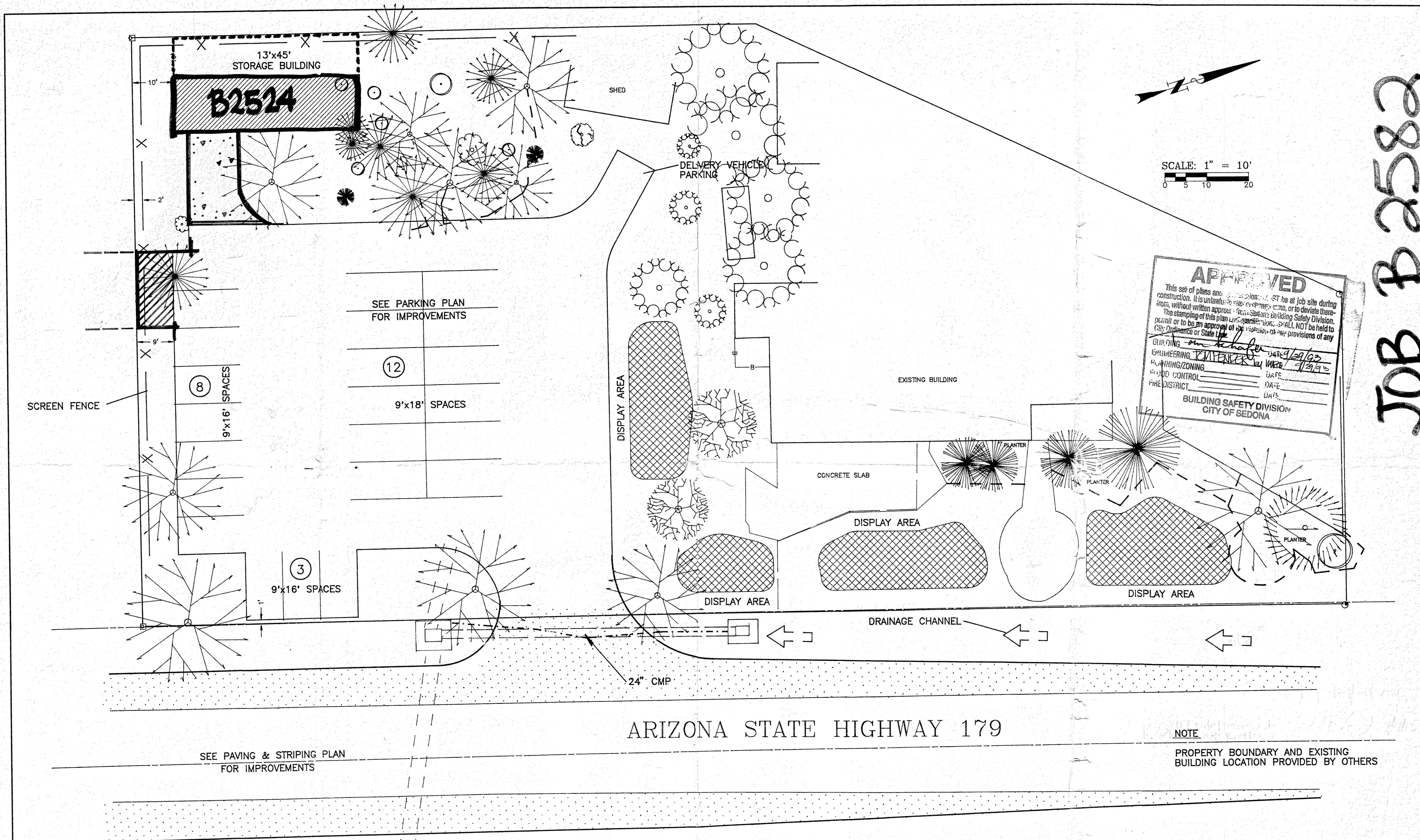
ALTERNATIVE 2

APPROVED BY P+2
 COMMISSION 9-15-92
 SUBJECT TO CONDITIONS
 ALT #2

SHEPARD-WESNITZER, INC.
 CONSULTING ENGINEERS
 70 PAYNE PLACE SEDONA, ARIZONA
 PHONE (602) 282-1061

PARKING LOT EXPANSION PLAN
 AND ACCESS MODIFICATIONS
 SON SILVER WEST GALLERY
 COCONINO COUNTY
 SEDONA, ARIZONA

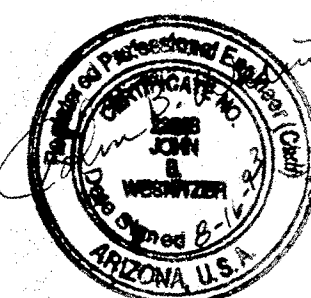
Job # 91038
 SHEET 1 OF 1
 DATE 4-4-92
 DRAWN by
 CHECKED
 REVISED



JOB B2582

NO.	REVISIONS	BY	DATE

SHEPHARD-WESNITZER, INC.
CONSULTING ENGINEERS
70 PAYNE PLACE SEDONA, ARIZONA
PHONE (602) 282-1081

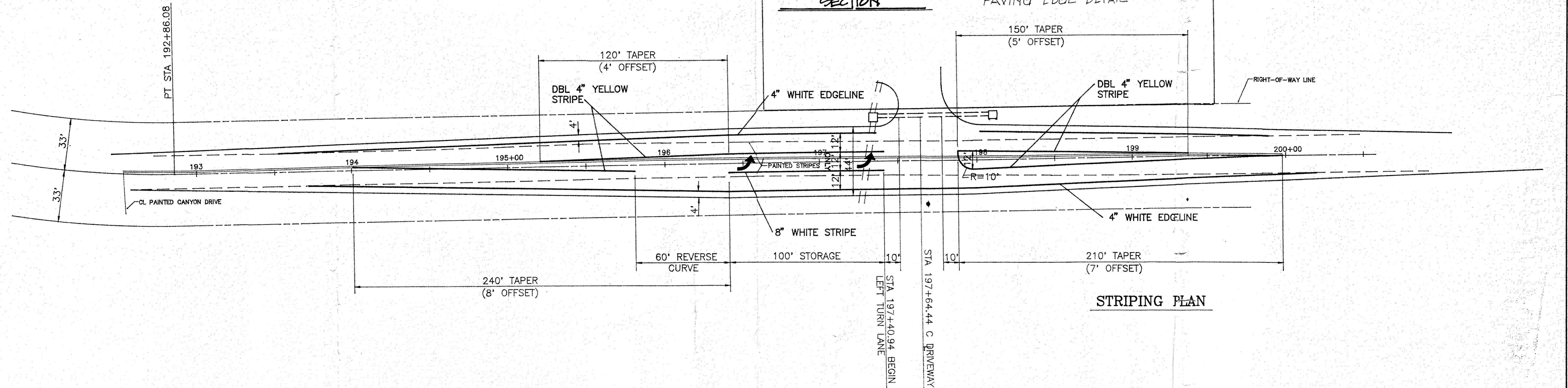
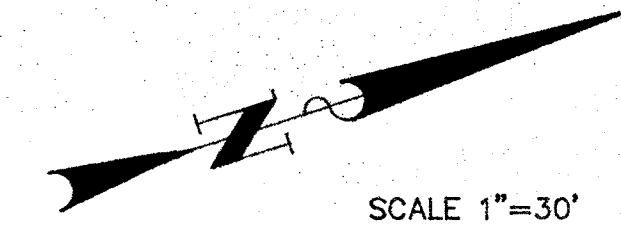
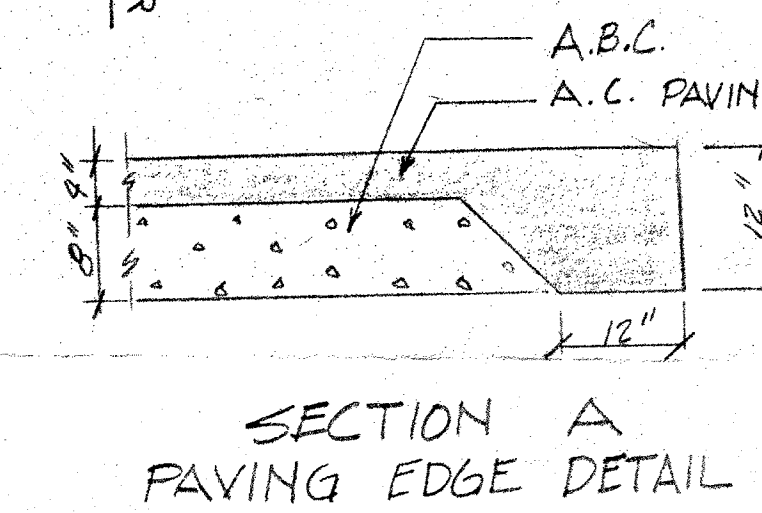
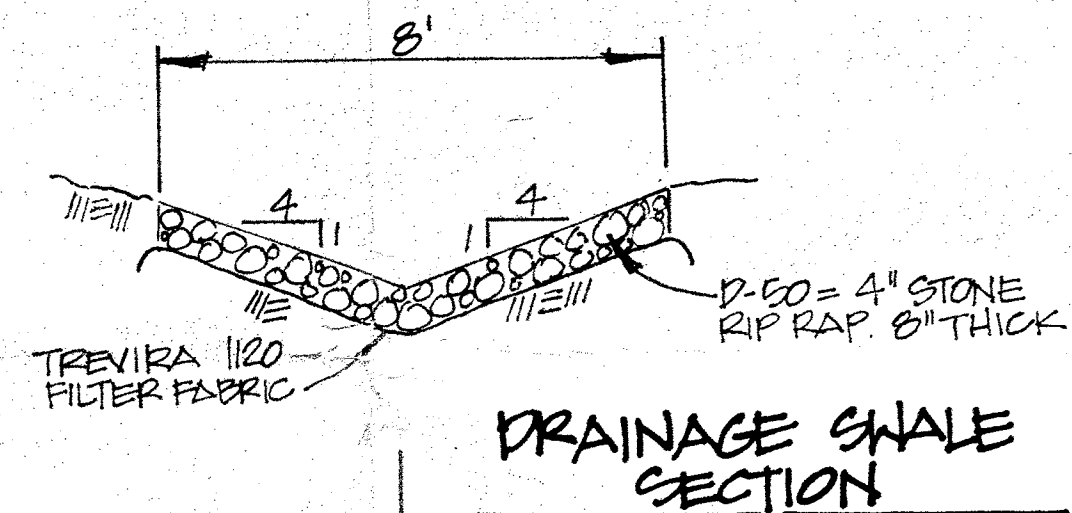
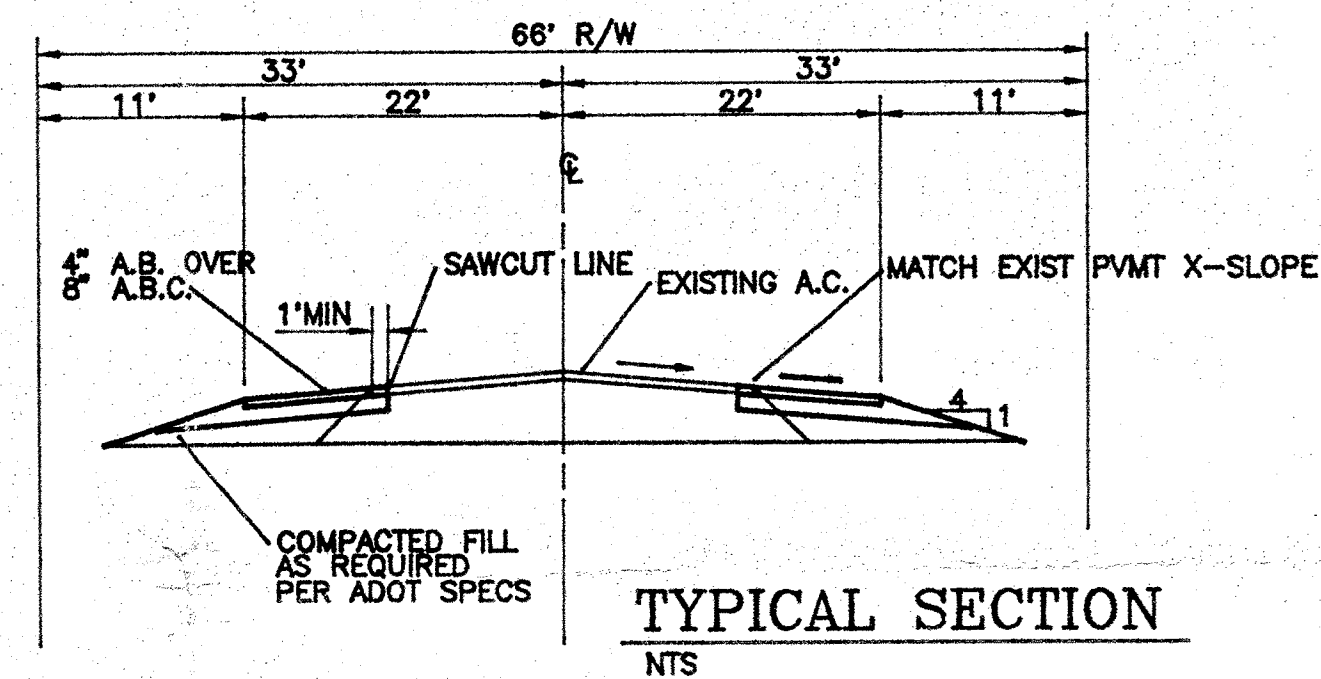
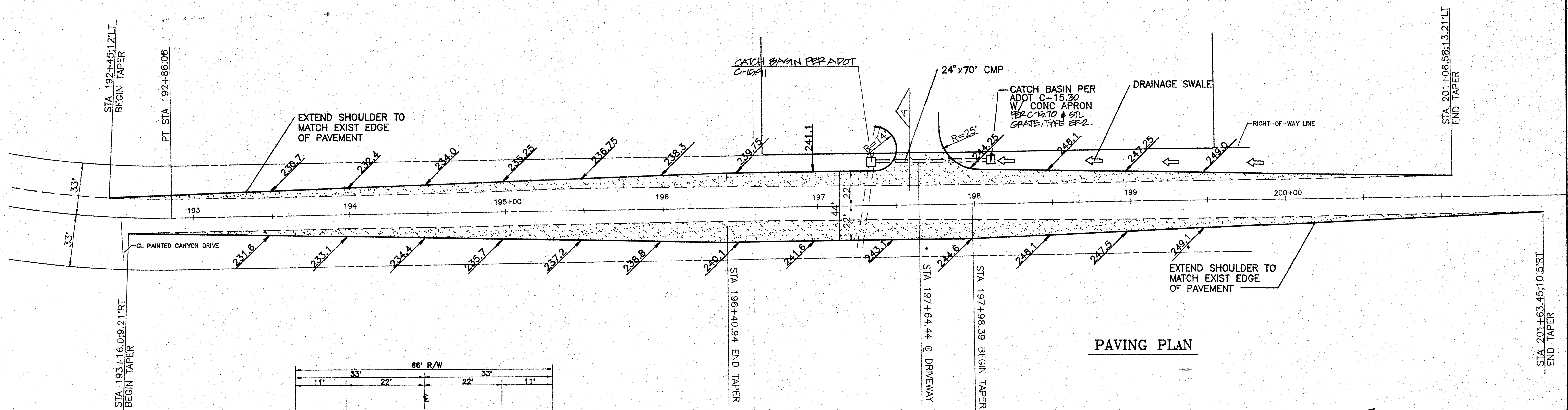


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SON SILVER WEST GALLERY
SEDONA, ARIZONA

SHEET TITLE:
SITE PLAN

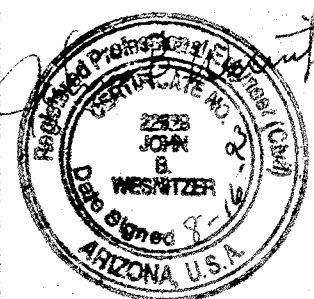
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DRAWN **MJJ**
CHECKED **JBW**
APPROVED
JOB # **91038**
DATE **9/93**

SHEET
1
OF
3



NO.	REVISIONS	BY	DATE

SHEPARD-WESNITZER, INC.
CONSULTING ENGINEERS
70 PAYNE PLACE SEDONA, ARIZONA
PHONE (602) 282-1061

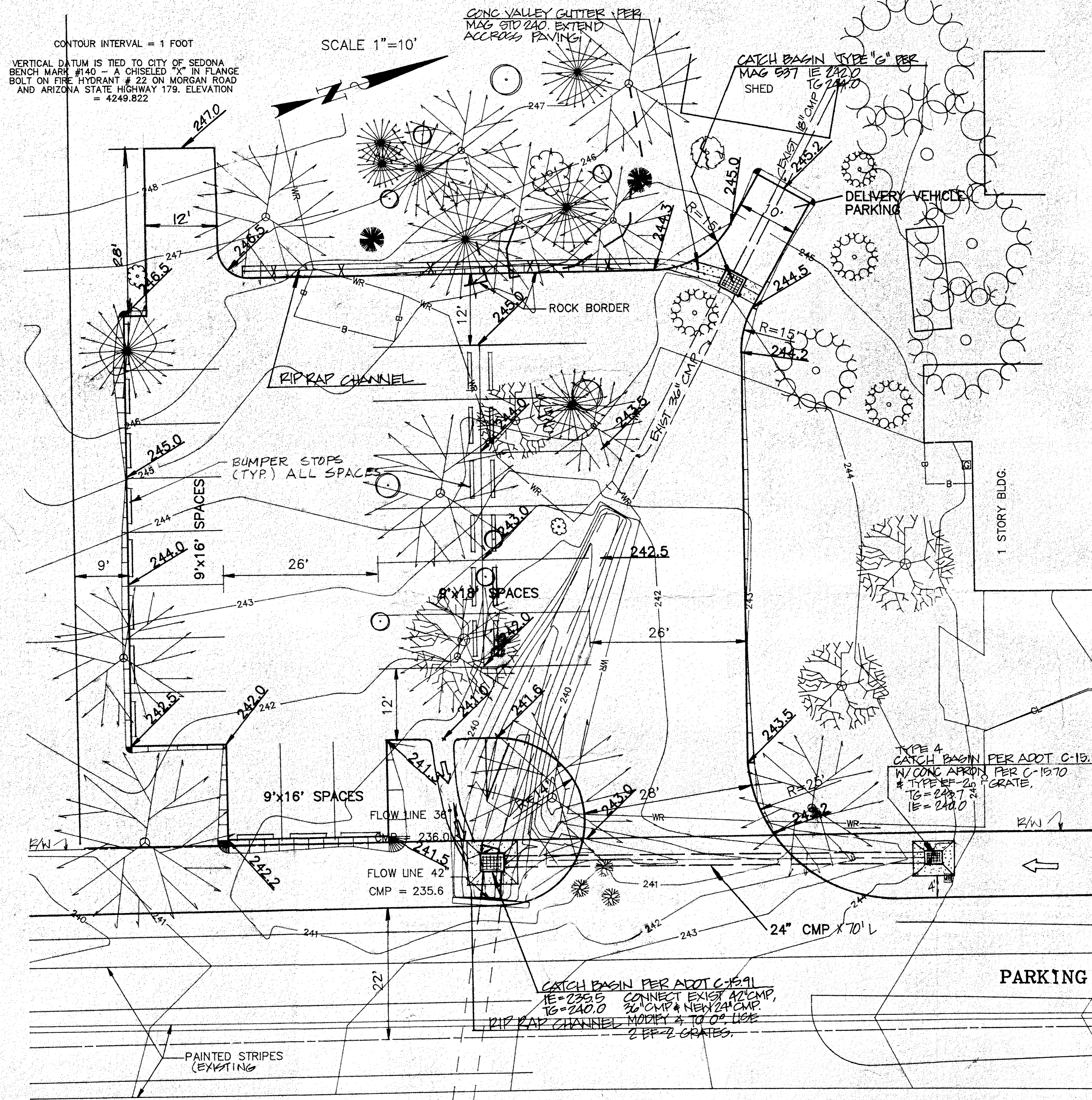


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SON SILVER WEST GALLERY
SEDONA, ARIZONA

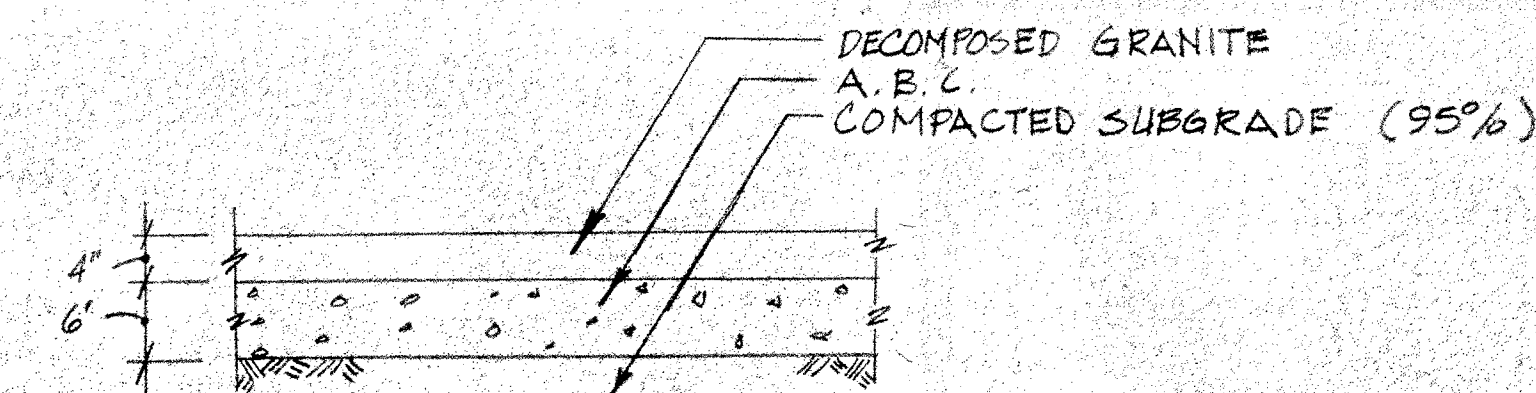
SHEET TITLE:
HIGHWAY 179
PAVING & STRIPING PLAN

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DESIGN	JBW
DRAWN	MJJ
CHECKED	JBW
APPROVED	
JOB #	91038
DATE	8/93

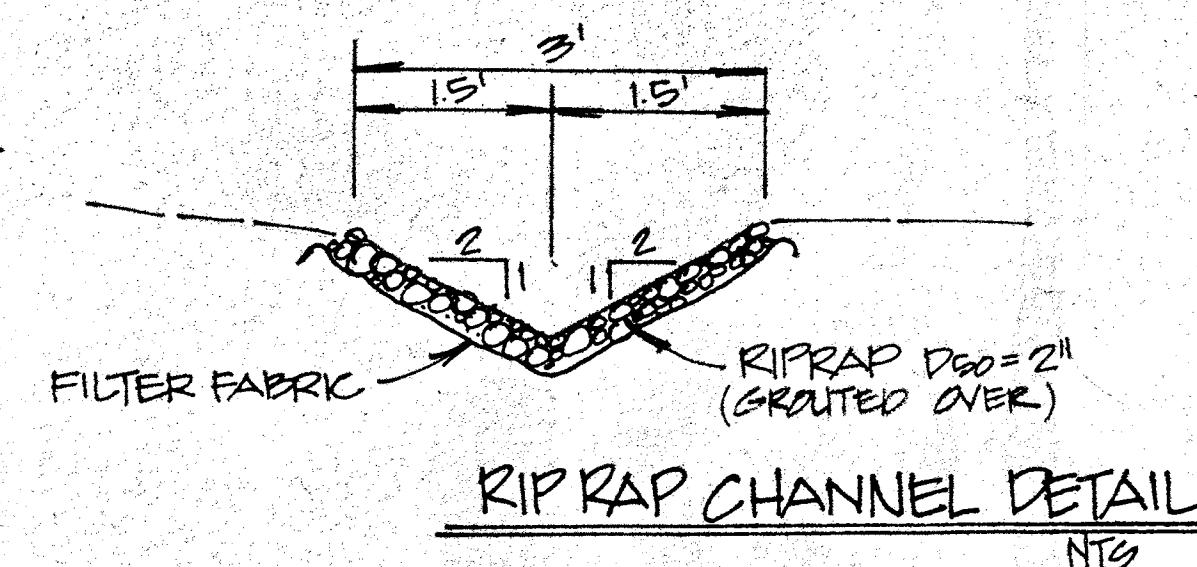
SHEET
2
OF
3



CUT VOLUME 47 C.Y.
FILL VOLUME 171 C.Y.



PARKING LOT
TYPICAL SECTION
NO SCALE



GENERAL NOTES:

- ALL WORK WITHIN A.D.O.T. RIGHT-OF-WAY SHALL CONFORM TO THE CURRENT A.D.O.T. STANDARDS AND SPECIFICATIONS.
- ALL TRAFFIC CONTROL MEASURES SHALL BE IN PLACE PRIOR TO THE START OF ANY WORK AND SHALL BE IN ACCORDANCE WITH THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
- THE PERMITTEE SHALL ASSUME FULL RESPONSIBILITY IN ATTAINING CLEARANCES FROM UTILITY COMPANIES AND WILL BE RESPONSIBLE FOR DAMAGE TO ANY UTILITY LINE.
- EXISTING HIGHWAY DRAINAGE FACILITIES SHALL BE MAINTAINED AT ALL TIMES, DURING AND AFTER CONSTRUCTION.
- MATERIALS AND EQUIPMENT NOT BEING UTILIZED SHALL NOT BE STORED WITHIN THE RIGHT-OF-WAY. ALL SURPLUS MATERIALS SHALL BE REMOVED FROM THE RIGHT-OF-WAY. THE PERMITTEE SHALL CLEAN OFF ANY MATERIAL (I.E. ROCK, MUD, DIRT, ETC...) TRACKED OR SPILLED ONTO THE HIGHWAY AS SOON AS POSSIBLE. ANY DAMAGE TO ANY FACILITY WITHIN THE RIGHT-OF-WAY SHALL BE REPLACED AND/OR REPAIRED TO THE SATISFACTION OF A.D.O.T.
- TRAFFIC SIGNS WITHIN A.D.O.T. RIGHT-OF-WAY REQUIRING RELOCATION WILL BE REMOVED, STORED AND REPLACED BY CONTRACTOR. NOTIFY THE HIGHWAY MAINTENANCE SUPERVISOR AT LEAST FIVE WORKING DAYS PRIOR TO THE TIME OF THE REQUIRED REMOVAL AND REPLACEMENT.
- THE EXISTING POSTED SPEED LIMIT IS 30 MPH.
- SURVEY DATA FOR THIS PROJECT WAS PROVIDED BY LANDMARK ENGINEERING AND SURVEYING.
- STRIPING TO BE PERFORMED BY CONTRACTOR, 2 COATS WATER BASED PAINT.

NOTES:

- INSTALL ALL REQUIRED TRAFFIC CONTROL MEASURES.
 - OBLITERATE EXISTING STRIPING WITHIN THE PROJECT LIMITS BY ADOT APPROVED METHOD.
 - CONSTRUCT CUT/FILL SLOPES PER A.D.O.T. STD C-02.30.
 - SAWCUT A NEAT LINE (2" MIN DEPTH) IN EXISTING PAVING A MINIMUM OF ONE FOOT FROM THE EXISTING EDGE OF PAVEMENT (OR IN SUITABLE MATERIAL) PRIOR TO PAVING WIDENED STREET SECTION.
 - ASPHALT PAVING SHALL CONFORM TO A.D.O.T. STANDARD SPECIFICATION, SECTION 406.
 - RE-SEED ALL NEW AND DISTURBED SLOPES WITH THE FOLLOWING SEED MIX:
- | SPECIE | RATE/ACRE |
|--|-----------|
| SAND DROPSEED (SPOROBOLUS CRYPTANDRUS) | 1# |
| SIDEOTS GRAMA (BOUPELOUS CURTIPENDULA) | 5# |
| CRESTED WHEATGRASS (AGROPYRON CRISTATUM) | 5# |

NO.	REVISIONS	BY	DATE
1	Added Typ. Section, Bumper Stop.	JRW	9/8/93

SHEPARD-WESNITZER, INC.
CONSULTING ENGINEERS
70 PAYNE PLACE SEDONA, ARIZONA
PHONE (602) 282-1081



PROJECT TITLE:
SON SILVER WEST GALLERY
SEDONA, ARIZONA

SHEET TITLE:
PARKING PLAN

SCALE	1"=10'
DESIGN	JBW
DRAWN	MJJ
CHECKED	JBW
APPROVED	
JOB #	91038
DATE	6/93

SHEET
3
OF
3



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86339
(602) 282-3113
TDD (602) 282-3113
FAX (602) 282-7207

AGREEMENT

This document sets forth the terms and conditions of an agreement between the City of Sedona and the owners of the Son Silver West Gallery.

WHEREAS, Son Silver West Gallery, located at 1476 Hwy. 179 in Sedona, Arizona is a nonconforming business use in a C-RS-18,000 zone (Single Family Residential); and

WHEREAS, the nonconforming aspects of said use were expanded in 1989 without benefit of approval of a conditional use permit, as required by Section 204.01 of the City of Sedona Interim Zoning Ordinance; and

WHEREAS, an "after the fact" conditional use permit was approved by the Planning and Zoning Commission for the City of Sedona on September 15, 1992; and

WHEREAS, in association with the granting of the conditional use permit, certain conditions of approval were acknowledged and agreed to by the owners of Son Silver West Gallery, Mr. and Mrs. Bill Robson, on October 20, 1992; and

WHEREAS, certain site improvements associated with said approval were not completed, as required by ordinance, within one year from the date of the conditional use permit approval; and

WHEREAS, the owners of Son Silver West Gallery, Mr. and Mrs. Bill Robson, have requested additional time in which to complete said improvements;

Now, therefore, the following **AGREEMENT** represents the terms and conditions under which the noted improvements are to be provided.

Parking lot screening and landscaping (condition 10 of the Planning and Zoning Commission's approval on September 15, 1992)

- The south and east sides of the parking lot shall be screened with earthen berms and landscaped to the satisfaction of the Director of Community Development no later than July 1, 1994.

Mercury vapor lighting (condition 8)

- All mercury vapor lighting shall be eliminated no later than August 1, 1994.

Other lighting (condition 9)

- Parking lot lighting shall be installed no later than August 1, 1994. All lighting shall be shielded to the satisfaction of the Director of Community Development no later than August 15, 1994.

Display area screening (condition 6)

- Earthen berms shall be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994.
- Screen landscaping shall be provided within the earthen bermed area along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than October 1, 1994.
- Additional visual screening of all outside display areas by use of a combination of earthen berming, landscaping and rustic fencing shall be completed to the satisfaction of the Director of Community Development no later than October 1, 1994.

Improvements to Hwy. 179 (condition 4)

- All required improvements to Hwy. 179 shall commence no later than April 1, 1995, shall be diligently pursued and shall be completed no later than July 1, 1995.

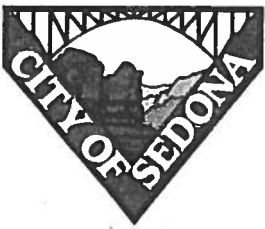
In consideration of the fact that this agreement assumes public use of the newly established parking lot area on the south side of the property prior to the completion of Hwy. 179 improvements as required by the Arizona Department of Transportation, the owners hereby agree to hold harmless and indemnify the City of Sedona against all costs, damages, penalties, expenses and fees (including court costs and attorney's fees), from any and all liability claims that may result from, arise out of or relate to vehicular use of the site ingress/egress prior to completion of such improvements.

The agreement is hereby entered into as of June 7 1994
by parties so authorized as signed below

Tom Schafer
Director of Community Development
City of Sedona

(2)

Son Silver West Gallery
Sedona, AZ
William B. Corbrow



2940 Southwest Drive
P.O. Box 3000
Sedona, Arizona 86336
(602) 282-3113
T DD (602) 282-3113
FAX (602) 282-7207

February 22, 1995

Mr. Bill Robson
Son Silver West Gallery
1476 Hwy. 179
Sedona, AZ 86336

RE: STATUS OF THE SON SILVER WEST GALLERY EXPANSION

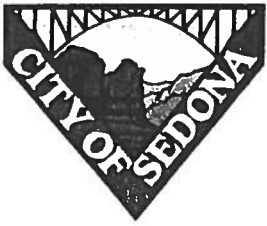
Dear Bill:

On June 7, 1994, you entered into an agreement with Tom Schafer, Director of Community Development, regarding the timing of completion of required improvements at the Son Silver West Gallery. As of this date, all required improvements have been completed with the exception of the elimination of the existing mercury vapor lighting on the property, installation of additional parking lot lighting and the construction of SR 179 improvements. The lighting items were to have been completed by the middle of August, 1994. The SR 179 improvements shall commence no later than April 1, 1995, and be completed no later than July 1, 1995.

Please complete the lighting items as soon as possible and be aware that the SR 179 improvements need to be started by April 1, 1995. Don't hesitate to contact me at 282-1154 if you have any questions.

Sincerely,

John O'Brien, Associate Planner
Department of Community Development



2940 Southwest Drive
P.O. Box 3000
Sedona, Arizona 86336
(602) 282-3113
TDD (602) 282-3113
FAX (602) 282-7207

May 16, 1995

Mr. Bill Robson
Son Silver West Gallery
1476 Hwy. 179
Sedona, AZ 86336

RE: STATUS OF THE SON SILVER WEST GALLERY EXPANSION

Dear Bill:

On June 7, 1994, you entered into an agreement with Tom Schafer, now the Assistant City Manager of Operations, relating to case number CUP 92-3 and regarding the timing of completion of required improvements at the Son Silver West Gallery. Per the agreement, the construction of required SR 179 improvements was to have been started no later than April 1, 1995, and be completed no later than July 1, 1995. As of this date, it does not appear that you have commenced construction of the SR 179 improvements. Please be advised that the improvements must be completed by July 1, 1995, or you will be in violation of the conditions of the agreement and the conditions associated with case number CUP 92-3.

Please give me a call at 282-1154 and let me know when you intend to complete the required improvements.

Sincerely,

John O'Brien, Associate Planner
Department of Community Development

From: Beth Escobar
To: Gioello, Nicholas; Levin, Kathy; Raber, Mike
Date: 3/15/2007 12:07:04 PM
Subject: Son Silver West

I have reviewed the existing CUP file, CUP92-3, for the Son Silver West property and offer the following summary for your review:

- the CUP was granted, per Section 208.07 of the Interim Zoning Ordinance, for expansion of nonconforming use and outside sales/display area. The CUP allowed for expansion of the parking lot to 20 spaces, and made the 5,000 square feet of outdoor retail space an allowed use.
- At the time the CUP was consistent with the Community Plan which designated the land use for this parcel as commercial.
- There were 12 conditions of approval for the CUP, including screening of outside display and improvements to the ADOT row which including grading and paving to improve drainage and safety. It is unclear in the file whether these improvements were ever made to the satisfaction of ADOT. It looks like the requirements were just absorbed into the current ADOT improvement project.
- There was no expiration date to the CUP.
- In January 2006 a Notice of Violation was filed against the property along with a suspension of CUP92-03. The NOV cited an addition to a storage building, operation of an information booth for an off-site resort, and screening not being in compliance. The NOV also noted encroachment of commercial activities, including parking, onto the undeveloped property to the south.
- The properties were brought into compliance by March 2006 and the CUP was reinstated.

I hope this information is helpful. Let me know if you have any questions.

Beth Escobar
Associate Planner
Current Planning Division
Phone: (928) 203-5044
Fax: (928) 204-7124
Email: bescobar@sedonaaz.gov



MEETING NOTES



Meeting with Son Silver West on 8/20/04

Date Issued: August 23, 2004

To: File

From:	Jennifer Livingston	ADOT
	Steve O'Brien	DMJM+HARRIS
	Bill Robson	Son Silver West
	Rio Robson	Son Silver West

The following meeting notes set forth our understanding of the discussions and decisions made at this meeting. If you have any questions, additions or comments, please contact the author immediately. If we do not hear from you within 10 days, we will assume that our understandings are the same. We are proceeding based upon the contents of these meeting notes.

- Steve O'Brien explained the features of the PPC to the Robsons. Their largest concern is access to the property.
- The business is operating under a special use permit. They have ten employees and are now receiving shipments from overseas.
- They have 40-foot container trucks that deliver shipments from China. Currently, they stop traffic on SR 179 and back the trucks into the site to unload. They also have Federal Express trucks approximately three times each week.
- The Robsons also own the parcel directly south of the retail shop. The parcel is zoned residential.
- The Robsons had prepared engineering drawings to construct a northbound left-turn lane at their driveway. He has installed some of the fill and drainage improvements on the east side of SR 179. He has a permit from ADOT (No. 59955) issued in 1993 for the left-turn lane. This permit was amended in 1994 to add landscaping. Shephard-Wesnitzer completed the traffic impact study and construction plans for the left-turn improvement.
- Steve O'Brien explained the Project Team's concern with providing a full median break at his existing driveway due to the proximity of the driveway to the roundabout that will be constructed at Arrow Drive. It was discussed and agreed that constructing a new driveway at approximately Sta. 641+00 would be a better location for a median break on SR 179. This driveway would be on the residential property just south of the pavement parking area. This would also allow circulation of large delivery trucks to the site and eliminate any backing up of large trucks on SR 179. His existing driveway would remain but operate at a right-in/right-out access to the property.



MEETING NOTES



Meeting with Son Silver West on August 20, 2004

Page 2 of 2

- Steve O'Brien and Jennifer Livingston would discuss with John O'Brien of the City of Sedona regarding the possibility of using the residential lot to construct the new driveway.
- Construction phasing was discussed with Robsons. The construction phasing will take in account the construction timing of the Uptown Enhancement project to minimize construction impacts to the area.



RECORD OF CONVERSATION



Date: 9-9-04 **Time:** 11:45 PM

Conversation With: Bill Robson **Of:** Son Silver West

Phone #:

Address:

City: **State:** **Zip:**

Add to Mailing List ☒

Project: Segment 3

Discussion: I called to inform Mr. Robson that the City would allow him to use the parcel next to his business as a driveway and graded isle way to access his paved parking area. The City will not allow the expansion of the paved parking lot. Given this information, the project team would incorporate a full median break at the location discuss previously during our site visit on 8-20-04.

Action (if applicable)

Team Member Name: Steve O'Brien

Copy to: file **Topic:** Son Silver West Access



DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division

104 Road Runner Drive
Sedona, Arizona 86336

Tel. : 928-204-7114
Fax: 928-204-7124
TDD: 928-204-7102
jwindham@sedonaaz.gov

January 11, 2006

Mr. Bill and Mrs. Linda Rose Robson
1476 Highway 179
Sedona, AZ 86336

Linda Rose Robson, Statutory Agent
Son Silver West Gallery, Inc
1476 Highway 179
Sedona, AZ 86336

NOTICE OF VIOLATIONS AND SUSPENSION OF CONDITIONAL USE PERMIT CUP 92-03

Dear Mr. and Mrs. Robson:

Our office has received complaints regarding the following properties owned by you and located within the Sedona city limits:

- (1) Son Silver West Gallery - tax parcel 401-31-012A
- (2) A vacant residential property - tax parcel 401-31-011
- (3) Your single-family residence located at 61 Arrow Drive - tax parcel 401-31-016

Thank you for meeting with John Egan and Jim Windham on December 21, 2005 at your business Son Silver West Gallery, when we discussed issues raised in the complaint letter of December 12, 2005. A copy of that letter was provided to you from our office on December 22, 2005. This letter outlines each property listed above with the code violations we observed, time-lines for your compliance, enforcement actions for non-compliance and any appeal rights you may have.

Please refer to the following information regarding those properties:

Son Silver West Gallery - Tax Parcel 401-31-012A

A Conditional Use Permit (CUP 92.3) was issued to this property on September 15, 1992 and was subject to the attached conditions of approval signed by you on October 20, 1992.

Condition #1 states, “ *Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission*”.

The City of Sedona believes you are in violation of CUP 92-3, the Sedona Land Development Code, and the Sedona Building Code and, it is our opinion that you have changed the character of use on this property, as described in the September 15, 1992 staff report, based on the following:

- An addition was built to the storage building located along the southwest property lines without the required building permit or Sedona Fire District approval, and was constructed within three feet and six inches of the rear property line.
- A storage rack system, approximately fifteen feet high by twelve feet long adjacent to your southern storage building, was erected without the required building permit and Sedona Fire District approval.
- An information booth for an off-site resort is in operation in the parking lot area.
- A section of the required screen/landscaping wall along the south end of the parking lot area has been removed.

Please be advised that per the Sedona Land Development Code, Section 402.10, "Revocation of a Conditional Use Permit", Subsection E.1, your CUP 92-3 is hereby suspended for failure to remain in compliance with your conditions of approval. Although this suspension allows continued operation of your business, you are hereby directed to comply with the following items by February 28, 2006:

- Remove the non-permitted addition to the storage building.
- Remove the non-permitted storage rack system.
- Remove and discontinue the resort information booth.
- Replace the required screen/landscaping wall along the southern boundary of the parking lot to the satisfaction of the City of Sedona Director of Community Development.

Failure to address these items by February 28, 2006, may result in the scheduling of formal proceedings with the Sedona Planning and Zoning Commission in order to conduct a revocation hearing per the Sedona Land Development Code section 402.10.E.2. The City of Sedona may also file formal charges in the Sedona Magistrate Court for violations of the Sedona Building Code and Land Development Code.

An Adjacent Vacant Residential Property - Tax Parcel 401-31-011

The following violations of the Sedona Land Development Code have been observed on this property:

- Commercial outdoor storage on this undeveloped residential property; section 902.03.A.
- Use of vacant residential property for the storage and parking of commercial vehicles and trailers; section 902.01.C & 902.03.B.
- Prohibited ingress and egress to a commercial business through an undeveloped residential property; section 605.02.A.
- Storage of cut-up tree limbs and brush; section 909.B.
- Creating a non-approved access for customer parking on residential property; section 605.02.A.
- Creating a non-approved driveway cut/grading with out a required grading permit; section 805.

You are hereby directed to remove the outdoor storage from this property, discontinue the storage and parking of commercial vehicles, and discontinue accessing your commercial business, "Son Silver West Gallery" through this undeveloped residential property, and to control and prohibit customers from parking on this vacant lot and obtain a grading permit or return the cut area back to pre-graded condition by February 28, 2006. Failure to comply may result in filing enforcement actions through the Sedona Magistrate Court.

Your Single-Family Residence - 61 Arrow Drive - Tax Parcel 401-31-016

- It has been observed that your property located at 61 Arrow Drive is being used for the parking of your *Son Silver West Gallery* employees' vehicles. This is a violation of the Sedona Land Development Code, Section 605.02.
- Non-compliant storage of an unscreened trailer in the front yard area.

You are hereby directed to discontinue allowing the employees of your commercial business to park their vehicles at your place of residence, located at 61 Arrow Drive. Your trailer needs to be parked or stored in the rear or side yard and screened from adjacent property views, by use of a fence or wall. Compliance must be met by February 28, 2006. Please be advised that you will need to obtain a building permit if you choose to construct a new fence or screen wall. Failure to comply with this directive may result in filing enforcement actions through the Sedona Magistrate Court.

The following are additional issues for your consideration:

- In accordance with your CUP 92-3, regarding the approval and character of use outlined in the September 15, 1992 staff report, the existing 1950 square foot single family residence located on tax parcel 401-31-012A is to always remain as *single family use* and shall not be converted to *office or storage use*. If this residence has been changed or the use of it converted, you will likewise, be in violation of your conditions of approval.
- The piles of black plastic bags and pile of packing material located behind the storage racks are unsightly and unscreened. This area must be cleaned up and the bags and packing material disposed of in a proper manner.
- Please be advised that the City of Sedona has contacted the Arizona Department of Transportation regarding the customer access to your vacant lot from Highway 179. They have indicated that this has not been approved. They will address this issue with you.

You have several appeal rights available in regard to the above properties and the noted violations.

If you wish to discuss them, please contact Mr. John O'Brien, Director of Community Development for the City of Sedona at 928-204-7114.

As per our discussion, you indicated that you are willing to bring your properties back into compliance and address these issue in a cooperative manner. In this regard, the City of Sedona will conduct an interim progress/compliance inspection on February 15, 2006. We look forward to resolving this matter and working with you to achieve compliance. If you have any specific questions regarding compliance issues, we are available to meet with you for discussion.

Sincerely,

Jim Windham, Development Services Supervisor
Department of Community Development

John O'Brien, Director
Department of Community Development

cc: City Attorney
Attachments



DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division

104 Road Runner Drive
Sedona, Arizona 86336

Tel. : 928-204-7114
Fax: 928-204-7124
TDD: 928-204-7102
jwindham@sedonaaz.gov

February 24, 2006

Mr. Bill and Mrs. Linda Rose Robson
1476 Highway 179
Sedona, AZ 86336

Linda Rose Robson, Statutory Agent
Son Silver West Gallery, Inc
1476 Highway 179
Sedona, AZ 86336

**AMENDMENT TO NOTICE OF VIOLATION DATED JANUARY 11, 2006 REFERENCE
SUSPENSION OF CONDITIONAL USE PERMIT CUP 92-03**

Dear Mr. and Mrs. Robson:

Thank you for meeting with John O'Brien and myself on February 16, 2006 regarding our Notice of Violation (NOV) and Suspension of Conditional Use Permit CUP 92-03 issued to you on January 11, 2006.

As we discussed at our meeting, several items needed clarification from our office regarding your verbal responses to the January 11, 2006 NOV. This letter will serve as that clarification and will also serve as an amendment to the January 11, 2006 NOV.

Son Silver West Gallery- Tax parcel 401-31-012A

- Since you have not provided any documentation from Tom Schafer, previous Director of Community Development, regarding the "break" in the screen wall requirement per CUP92-03, conditions of approval #10, you are hereby directed to reinstall the solid screen wall in the same manner as the existing screen wall, to extend the full length of the southern property boundary of the parking lot area. Please be advised that you must submit a required building permit application for this work by February 28, 2006. You will then have 30 days from the date of issuance of the building permit to complete this work. This issue will be re-evaluated as part of the future SR 179 expansion project.
- The portable toilet must be removed from this property and discontinue its use by March 10, 2006. Your conditional use permit, CUP92-03 does not allow for the use of portable toilets on your property.
- The resort information booth use must be removed from the property by February 28, 2006. Your conditional use permit, CUP 92-03 does not allow for the use of a resort information booth on your property.

- The demolition permit application has been received by our office and will be issued by February 28, 2006. A condition of approval with a compliance date of June 15, 2006 to remove the non-permitted addition to the southern storage shed and remove the storage rack system will be attached to this permit, as agreed.

An adjacent vacant residential property- tax parcel 401-31-011

- Based on a February 24, 2006 site inspection by J. Andy Dickey, P.E., Associate Engineer, the non-approved driveway cut/grading you performed on this property is a violation of the Sedona Land Development Code, Section 805. You must refill, compact and return this area to the original natural grade line and condition by March 30, 2006.
- You must discontinue parking, storing, or using this residential property for parking, accessing your commercial property or any other non-approved use by February 28, 2006.

Please provide your response to the use of the 1950 square foot single family residence by February 28, 2006, as you agreed.

Please be advised that your conditional use permit has specific conditions of approval with which you must comply. You are not allowed to add uses, add structures, remove required screening, or to commence any other such activities without *first* amending your use permit or by obtaining approval from the City of Sedona. Your statement to us that you need to expand your business is irrelevant in regard to your CUP conditions of approval. Your failure to address the above stated actions by the stated dates will result in any legal enforcement actions allowed by law.

You are also advised that the remaining items listed on the Notice of Violation, dated January 11, 2006, remain in affect.

We look forward to resolving this matter and working with you to achieve compliance. If you have any specific questions regarding this amended Notice of Violation or compliance issues, please contact us at the above listed address or numbers.

Sincerely,

Jim Windham, Development Services Supervisor
Department of Community Development

John O'Brien, Director
Department of Community Development

cc: City Attorney

Attachments

acm:JW



CP
update
SR 179
(Son Silver
West)

May 2, 2008

Mr. Rio Robson
Son Silver West
1476 Highway 179
Sedona, AZ 86336

RE: Temporary use of your southern lot, 401-31-011 and permanent parking lot project

Dear Rio,

This letter regards your proposal to work with Southwest Asphalt and Paving (SAP) to turn your southern lot, 401-31-011 into a temporary staging area for the SR 179 construction project, and your future plans to develop this property as a permanent parking lot for Son Silver West customers.

Southwest Asphalt and Paving may use 401-31-011 as a temporary staging area for the SR 179 construction project provided the property is not used for fuel storage and no trees are removed.

You also propose to develop 401-31-011 into a permanent parking lot for Son Silver West customers. To do so will require approval of a major amendment to the Sedona Community Plan and approval of a rezoning. The City of Sedona will be updating the entire Community Plan starting in 2009. This is expected to be an 18-24 month process. The public would then vote on the Community Plan update sometime in 2011. During the update process, City staff plans to initiate discussion with the entire community regarding acceptable future land uses along the SR 179 corridor, including the Son Silver West property and 401-31-011.

You always have the option to file for a major amendment to the Community Plan and rezoning of 401-31-012A separately from the citywide update. In accordance with Arizona State Law, major amendments to the Community Plan are considered once per year and our next deadline to file an application would be in April of 2009. The Planning and Zoning Commission and City Council would consider the major amendment applications in the summer and fall of 2009. Your zone change application could also be filed at the same time as the major amendment. The filing fee for major amendments is \$1800 plus your share of the public noticing costs, which would run approximately \$8000. Public noticing costs are shared equally amongst all applicants filing for major amendments.

The City prefers to undertake the "future land use discussion" of the entire SR 179 corridor as part of our next citywide Community Plan update rather than take in and process individual requests from each property owner along the corridor. City staff's preference is that you wait for the citywide update so we can look at this issue comprehensively and let the entire community decide the future land uses for the SR 179 corridor. However, if you want to propose a major amendment to the Community Plan on your own, this is your prerogative. In pursuing a major amendment on your own, please understand the Community Development staff would be hard pressed to recommend approval of this individual request given that the citywide update is just around the corner. We prefer to look at the entire corridor comprehensively, rather than on a per property basis.

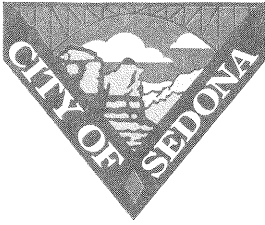
I hope this gives you the information you need. Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John O'Brien", with a stylized flourish at the end.

John O'Brien, Director
Community Development Department

Cc: Jodie Filardo, Economic Planner
Michael Raber, Senior Long Range Planner



102 Roadrunner Drive
Sedona, Arizona 86336
TDD (928) 204-7102
www.SedonaAZ.gov

May 19, 2011

Mr. Rio Robson
Son Silver West
1476 Highway 179
Sedona, AZ 86336

RE: ILLEGAL USE OF ASSESSOR'S PARCEL NUMBER 401-31-011

Dear Rio:

This letter is to inform you that you are currently illegally using Assessor's Parcel Number 401-31-011 as a parking lot and outside sales, display and storage of merchandise and equipment associated with the adjacent Son Silver West retail business. The property in question is residentially zoned and does not currently allow your unauthorized expanded use.

I have enclosed a May 2, 2008 letter I sent to you that outlined the steps that are necessary to develop this property as permanent parking for Son Silver West.

Please be advised that you have until June 24, 2011 to remove all parking on this property, including all concrete parking stops. In addition, all display items including, but not limited to, sculpture, construction materials and a covered wagon must also be removed. Failure to remove these items and cease the illegal use on this property by June 24, 2011 will result in formal code enforcement action.

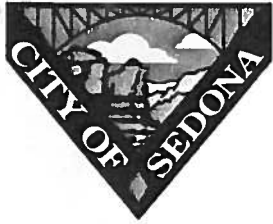
Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,

John O'Brien, Director
Community Development Department

Cc: Jim Windham
John Egan
Nick Gioello

Encl.



102 Roadrunner Drive
Sedona, Arizona 86336
TDD (928) 204-7102
www.SedonaAZ.gov

May 24, 2011

Mr. Rio Robson
Son Silver West
1476 Highway 179
Sedona, AZ 86336

RE: ILLEGAL USE OF ASSESSOR'S PARCEL NUMBER 401-31-011

Dear Rio:

I received your voice mail today and thought it would be easier to respond in writing so you get clear direction and so there are no misunderstandings on how you will need to proceed.

All of the asphalt on this property, except the driveway access from SR 179 connecting to the existing parking lot for Son Silver West, will need to be removed. Based on my inspection, you created a few paved parking spaces and these will need to be physically removed by June 24th. Please contact Jim Windham at 204-7114 and he will meet you on-site and review with you what needs to be removed from the property to bring you into compliance.

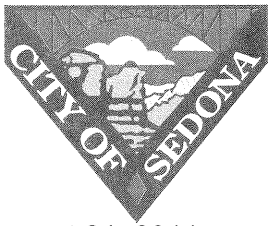
We have just begun our citywide Community Plan Update process. During this process, we will focus on specific areas of Sedona and I would anticipate that the SR 179 corridor would be a topic of discussion. I would suggest that you become involved in this process if you propose to redesignate your property for commercial or parking use. I would suggest you contact Mike Raber at 204-7106 or mraber@sedonaaz.gov to get on our mailing list for future Community Plan Update meetings.

Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,

John O'Brien, Director
Community Development Department

Cc: Jim Windham
Mike Raber



102 Roadrunner Drive
Sedona, Arizona 86336
TDD (928) 204-7102
www.SedonaAZ.gov

August 31, 2011

Mr. Rio Robson
1476 Highway 179
Sedona, AZ 86336

NOTICE OF VIOLATIONS AND SUSPENSION OF CUP 92-3

Dear Rio:

Thank you for meeting with Jim Windham and me at your Son Silver West Gallery property on August 23, 2011. Based on our review of the property, it is apparent that you are in violation of your existing Conditional Use Permit (CUP 92-3) requirements and conditions of approval. We also believe that you are in violation of Land Development Code requirements on your adjacent properties located to the south and west of the Son Silver West Gallery. Additionally, you have constructed several structures on the Son Silver West Gallery property without obtaining building permits.

This letter outlines each property listed below with the code violations we observed and necessary corrective actions.

- (1) Son Silver West Gallery - tax parcel 401-31-012A
- (2) A vacant residential property - tax parcel 401-31-011
- (3) Your single-family residence located at 61 Arrow Drive - tax parcel 401-31-016

Please refer to the following information regarding the above noted properties:

Son Silver West Gallery - Tax Parcel 401-31-012A

A Conditional Use Permit (CUP 92-3) was issued to this property on September 15, 1992 and was subject to several conditions of approval.

Condition #1 states, "Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission".

The City of Sedona believes you are in violation of CUP 92-3, the Sedona Land Development Code, and the Sedona building codes and, it is our opinion that you have changed the character of use on this property, as described in the September 15, 1992 staff report, based on the following:

- You have converted a workshop into a coffee shop without obtaining the proper zoning approvals, building permits and health department permits. **You must discontinue operation of this illegal coffee shop immediately.**
- You have constructed a shade structure behind the coffee shop that encroaches into the required rear yard setback area without obtaining a building permit. **The shade structure must be removed by October 1, 2011.**
- You have constructed and attached a roof system to a rear yard storage building. This roof system encroaches into the rear yard setback area and was constructed without obtaining a building permit. **The roof system must be removed by October 1, 2011.**

- You have constructed a fence along the rear property line without obtaining a building permit. **You must apply for a building permit for the fence by October 1, 2011.**
- You have constructed a fence along the front property line and an open-air roof structure that encloses a vending machine without obtaining building permits. You applied for building permits for these improvements on August 3, 2011 and the approval of these permits is pending.

Please be advised that per the Sedona Land Development Code, Section 402.10, "Revocation of a Conditional Use Permit", Subsection E.1, your Conditional Use Permit (CUP 92-3) is hereby suspended for failure to remain in compliance with your conditions of approval. Although this suspension allows continued operation of the Son Silver West Gallery, with the exception of the illegal coffee shop, which must be discontinued immediately, you are hereby directed to comply with the previously noted items by October 1, 2011.

Failure to address these items by October 1, 2011, will result in the scheduling of formal proceedings with the Sedona Planning and Zoning Commission in order to conduct a revocation hearing of CUP 92-3 per the Sedona Land Development Code section 402.10.E.2. If the Planning and Zoning Commission votes to revoke CUP 92-3, you may be required to close the entire Son Silver West Gallery until you bring the property into compliance with your conditions of approval. Additionally, the City of Sedona may also file formal charges in the Sedona Magistrate Court for violations of the Sedona Land Development Code and Sedona building codes.

An Adjacent Vacant Residential Property - Tax Parcel 401-31-011

This property has been used as a parking lot for the Son Silver West Gallery inconsistent with the property's zoning. The property has also been used for the storage of business related dirt fill material and other storage material. **Use of this property as a parking lot for the Son Silver West Gallery must be discontinued immediately and the dirt fill material and other storage material must be removed by October 1, 2011.**

Failure to comply may result in filing enforcement actions through the Sedona Magistrate Court.

Your Single-Family Residence - 61 Arrow Drive - Tax Parcel 401-31-016

It has been observed that your property located at 61 Arrow Drive is being used for the parking of your Son Silver West Gallery employees' vehicles and for the commercial storage of construction materials related to the Son Silver West Gallery. **This is a violation of the Sedona Land Development Code, Section 605.02, and must be discontinued immediately.**

Failure to comply may result in filing enforcement actions through the Sedona Magistrate Court.

Please feel free to contact me at 204-7123 if you have any questions.

Sincerely,



John O'Brien, Director
Community Development Department

Cc: Mike Goimarac
Jim Windham
Joelle Wirth



Permit

City of Sedona

102 Roadrunner Drive Sedona, Arizona 86336 (928) 282-1154

Building Permit

B11594

Important Dates

Final	CO	FX	FX
BY 10	Cancelled	Expired	Revoked

Property Information

Project Name	Permit Code	Zone Use Code	Parcel #
AFTER THE FACT PERMIT FENCE FOR SON SILVER WEST	700	2004	401-31-012A
Construction Address: 1476 STATE ROUTE 179			
Lot #	Subdivision	Broken Arrow	
Sub #	Building Name		

Owner / Tenant	WILLIAM B ROBSON		
Address	1476 STATE ROUTE 179		
City / State / Zip	SEDONA	AZ	86336
Phone #	928-282-3580	Fax #	

Contractor: NO CONTRACTOR LISTED

Address			
City / State / Zip			
License #		Tax #	
Phone #		Cell #	Fax #

Public Works

WW Cesset #	DISCH	Authority to Connect	County W.W. #
	ING/DEO		
Type		Size	ADEQ W.W. #

Category/Units					
----------------	--	--	--	--	--

Right of Way Permit					
City		Curv Size	FEMA FPM	FL Ctr Approved	
ADOT		Curv	FL	Devel Permit	

Engineer Approved By: DWP

Approval Date: 09/08/11

Issuance

Comments/Conditions of Approval

It is the owner's, tenant's and contractor's responsibility to comply with the ADA, specifically the requirements of ADAAG.

The issuance of this permit is based upon the approved plans, specifications and other data. Issuance of this permit shall not prevent the City from thereafter requiring the correction of errors in said plans, specifications and other data. This permit becomes null and void if the construction work authorized is not begun within 180 days from date of issue or if at any time prior to final inspection and approval the work is suspended or abandoned for a period of 180 days.

Signature of Owner or Authorized Agent

Date Issued

Zoning Details

Zoning Dist	Permit	Permit	Side 1	Side 2
RS-18b	25	25	10	15
Fee Impact				
Log Impact				
Comm Impact				
Zoning Code				
Building Height				
Lot Coverage (%)				
Footprint				
Comments:	This after the fact permit is for the front fence only.			

Application Approved By: EME Zoning Approval Date: 09/01/11

Building Details

Type of Construction	Occupancy Classes			
V-B	U			
Residence	Garage	Carport	Deck	Patio
Shed	Bent	Addition	Remodel	Demo
Commercial	Deck	Patio	# Dwellings	
Access	Edging	Add	# Stories	
Subject to Impact				# Permit Lodging
				# Impact Lodging 0

Comments: 1. OTHER FEES = \$100.00 (\$50.00 MINIMUM FOR FENCE PER PARCEL PER PROJECT + \$50.00, DOUBLE PERMIT FEES APPLY IN THIS CASE), APPLICATION VALUATION OF 18K SHOWN FOR REFERENCE.

Application Approved By: BP Building Approval Date: 09/08/11

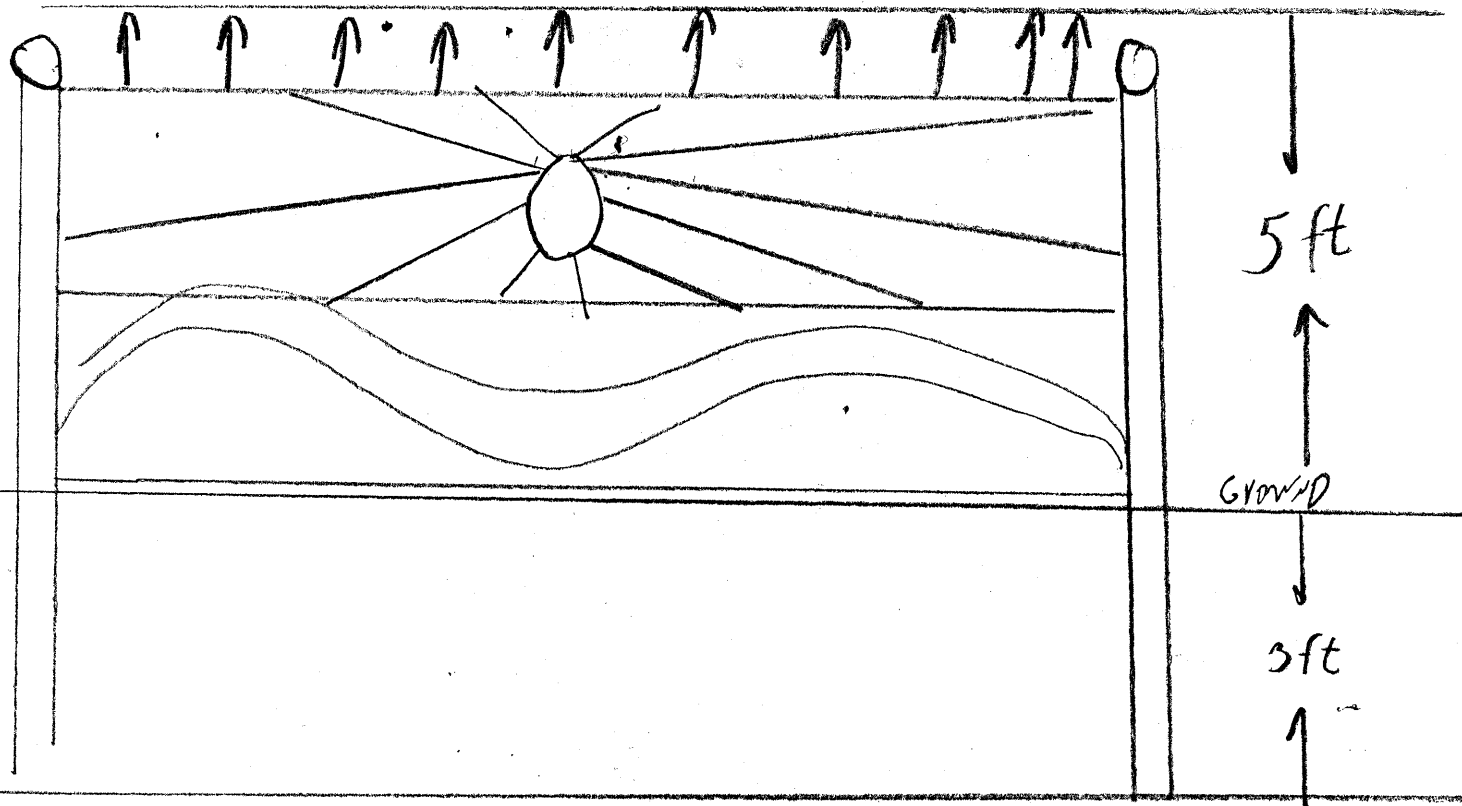
Fees

Calc. Permit Valuation:	\$18,000.00
Adjusted Permit Valuation:	0 %
Plan Review Fee:	\$ 0.00
Building Permit Fee:	\$ 0.00
Electrical:	\$ 0.00
Mechanical:	\$ 0.00
Plumbing:	\$ 0.00
Grading Review Fee:	\$0.00
Grading Permit Fee:	\$0.00
Other Fees:	\$ 100.00
Total Permit Fees:	\$100.00
Less Deposit:	\$ 50.00
Permit Fee Due:	\$ 50.00
Impact Fee Due:	\$ 0.00
Sewer Cap. Fee Due:	\$ 0.00
Total Fees Due:	\$ 50.00

JOB B11594

NEW fence

FRONT VIEW



TOP VIEW

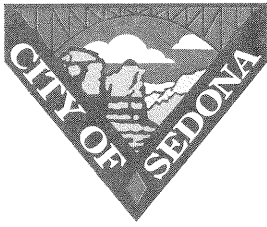
20 P.C. @ 6 ft

← N

120 ft

14 ft

REVIEWED FOR CODE COMPLIANCE		
1. REVIEWED DOCUMENTS MUST BE ON JOB SITE		
2. REVIEWED DOCUMENTS MUST BE APPROVED BY THE ARCHITECT/ENGINEER/DESIGNER OF RECORD PRIOR TO BUILDING SAFETY REVIEW		
3. STAMPING OF DOCUMENTS SHALL NOT BE HELD TO PERMIT OR APPROVE VIOLATION OF ANY BUILDING CODE, CITY ORDINANCE OR STATE LAW		
BUILDING	BLP	DATE 9-8-11
ENGINEERING	DNP	DATE 9-8-11
PLANNING/DESIGN	EME	DATE 9-1-11
FLOOD CERTIFICATE		
FIRE DEPARTMENT		
CITY OF C.		



102 Roadrunner Drive
Sedona, Arizona 86336
TDD (928) 204-7102
www.SedonaAZ.gov

September 12, 2011

Mr. Rio Robson
1476 Highway 179
Sedona, AZ 86336

RE: YOUR QUESTION REGARDING MODIFICATION OF CUP 92-3

Dear Rio:

This letter is in response to your question regarding the modification of CUP 92-3 relating to the Son Silver West Gallery. You have asked whether you would be permitted to modify CUP 92-3 to allow for a new coffee shop and other accessory structures on the Son Silver West Gallery property.

The Son Silver West Gallery is located in a single-family residential zoning district and is considered a legal nonconforming use. On September 15, 1992, the City of Sedona approved a conditional use permit (CUP 92-3), which allowed for the expansion of the Son Silver West Gallery. At that time, legal nonconforming uses were allowed to expand subject to approval of a conditional use permit.

Subsequent to the approval of CUP 92-3, the City of Sedona changed the nonconforming use section of the Land Development Code (LDC) and no longer allowed the expansion of legal nonconforming uses through the approval of a conditional use permit. Article 1204 of the LDC states: *"A legal nonconforming use may continue only in the manner and to the extent that it existed at the time of such enactment, amendment, or annexation, subject to the following provisions."* One of those provisions, Section 1204.01 of the LDC, states: *"No expansion shall be made of any nonconforming use unless such expansion conforms to the regulations specified for the district in which it is located. In cases where the nonconforming use occupies a building, structure, or any portion of a site, expanding the use into an additional building or land area is prohibited."* Another provision of the LDC, Section 1204.04, further states: *"A nonconforming use shall not be changed to a different nonconforming use."*

It is my interpretation of the Land Development Code that you would not be allowed to modify CUP 92-3 to introduce new uses, such as a coffee shop, or construct new accessory structures because to do so would be a change of a legal nonconforming use inconsistent with the provisions of the LDC noted above. A Community Plan amendment and a rezoning to a commercial zoning district would be required in order to operate a coffee shop and construct new accessory structures on the Son Silver West Gallery property.

You, or any person aggrieved by my interpretation and decision has the right to appeal this interpretation to the City's Board of Adjustment, pursuant to Section 404.10 of the LDC. Section 404.10 requires that any such appeal be in writing, clearly state the reasons for the appeal, and include a fee of \$150. Any appeal must be filed in the Community Development Department offices within 15 days of the date of this letter. In the event of an appeal, I will submit the matter for public hearing before the City's Board of Adjustment.

Please feel free to contact me at 928-204-7123 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "John O'Brien".

John O'Brien, Director
Community Development Department

Cc: Mike Goimarac, City Attorney
Ron Ramsey, Assistant City Attorney
Nick Gioello, Senior Planner
Beth Escobar, Associate Planner

CITY OF SEDONA
102 ROADRUNNER DRIVE
SEDONA, AZ 86336
(928) 204-7185

Receipt No: 5.015822 Sep 26, 2011

B11594&AW11-2/SON SILVER WEST

COMM. DEVELOPMENT	
BLDG PERMIT (211)	50.00
10-4310-00-211	
BUILDING PERMIT FEES	
COMM. DEVELOPMENT	
APPEALS [420]	150.00
10-4310-00-420	
APPEALS	

Total:	200.00
	=====

CHECK/MONEY ORDER	
Check No: 6100	200.00
Total Applied:	200.00

Change Tendered:	.00
	=====

09/26/11 11:52am

Son Silver West Gallery
Robson Design
1476 Hwy 179 Sedona, AZ 86336
(928)282-3580, fax (928)282-5497
www.sonsilverwest.com

CITY OF SEDONA
2011
Mr. John O'Brien
102 Roadrunner Drive
Sedona, AZ 86336

September 22,

Dear Mr. O'Brien

Re: Son Silver West Gallery C-U-P-92-3 Appeal
Section 404-10

Thank you for your timely response to our questions, concerns and progression.

We are responding with an appeal, explanation and the required fee within Sedona's Community Development Department guidelines.

Son Silver West appeal, interpretation and explanation is as follows:

A.. The shade roof and gutter behind coffee shop (ie-work shop), has been in place for 15 yrs. plus and was permitted along with building of said "work-repair" shop and is currently on file with CDD.

B. An attached professional (receipts on file) rain gutter system was employed to deflect and drain all storm water and monsoon down pours into an appropriate culvert.

This water shed "all- weather" clear roofing is angled in such a degree it is most effective in directing the rain water into an industrial gutter system, depositing all water into city culverts.

This is a vital remedy for intense flash flooding, erosion and a hazardous "slip and fall" zone impacting our customers, clients and working staff . Water shed is a serious issue in Sedona.

We have experienced flash floods running through our building and parking lot. Over the years we have taken precautionary methods to divert storm waters. Son Silver West roof and gutter system that are in place presently are proving to be a necessary safety factor involving pedestrians and vehicles alike. Our adjacent neighbor at 335 Bowstring has commended SSW for tackling the run off and erosion from his property onto SSW property (name and date on file).

Son Silver West Gallery
Robson Design
1476 Hwy 179 Sedona, AZ 86336
(928)282-3580, fax (928)282-5497
www.sonsilverwest.com

CITY OF SEDONA
2011
Mr. John O'Brien
1 0 2 Roadrunner Drive
Sedona, AZ 86336

September 22,

In summary to SSW'S appeal, we are stating these facts listed below:

1. 90 % less erosion.
2. An eradication of mosquito larve.
3. Eradication of black mold, fungi and wet rot.
4. Diversion of water flooding pathways on city sidewalks and city bicycle lanes.
5. Proper storm water run-off has been a safety mandate with our commercial insurance carrier and is approved.
Any diversion from this safety issue will need to be discussed between S.C.D.D attorney's and Safeco's commercial insurance agents and their corporate attorneys'.

Thank you for your attention and consideration for this important issue.

Sincerely,

William B. Robson
L. Rose Robson
Rio C. Robson

Son Silver West Gallery, Inc.

Date: 06-Oct-2011 10:46
From: John O'Brien <JO'Brien@sedonaaz.gov>
To: rio@son
silverwest.com <rio@sonsilverwest.com>
CC: Mike Raber <mraber@sedonaaz.gov>, Ka
thy Levin <klevin@sedonaaz.gov>
Subject: Your Recent Letter on Son Silver West
Received on October 4, 2011
Attachments:
 MESSAGE TEXT (1603 bytes)
 Son Silv
er West Parking Lot Project.doc (80384 bytes)

Forwarded: No

=====
=====

Hi Rio,

I received your recent letter regarding your proposed use of APN 401-31-011 for a parking lot and APN 401-31-016 for office space and employee parking. We have discussed this issue in the past, and to reiterate, it is not possible to do what you propose without amending the Community Plan and obtaining a rezoning.

APN 401-31-011 is zoned Single Family Residential.

It is my understanding that ADOT used this property as a temporary staging area during construction of the SR 179 project, but ADOT did not convert this property into a "non-residential plot" as you state in your letter. ADOT does not have the authority to change zoning within the City of Sedona. Only the City Council has the authority to rezone property. ADOT and the City did allow you to use a small portion of this property for access to the adjoining Son Silver West parking lot, but the property was not rezoned for a non-residential use or allowed to be used as a parking lot. I've attached my May 2, 2008 letter that I sent to you regarding this issue.

APN 401-31-016 is zoned Single Family Residential.
. A Community Plan Amendment and rezoning would be required to use this property for office space and employee parking.

As I have mentioned before, I feel you should work through the current Community Plan Update process in an attempt to redesignate these properties for non-residential use. If this is successful, then you would have to apply for a rezoning through the Planning and Zoning Commission and City Council.

John

John O'Brien, Director
Community Development Department
928-204-7123

Date: 04-Nov-2011 10:57
From: John O'Brien <JO'Brien@sedonaaz.gov>
To: Rio Robson <rio@sonsilverwest.com>
Subject: Re: Your Recent Letter on Son Silver West
Received on October 4, 2011
Attachments:

MESSAGE TEXT (3062 bytes)

Forward
ed: No

=====

Hi Rio,

Thanks for your e-mail.

Actually, your appeal was scheduled for December 2nd, not December 3rd.

Based on your e-mail request to defer, I will hold off on the appeal hearing. Upon my site inspection with you on November 2nd, it was apparent that you have discontinued the use of the coffee shop.

I have reviewed all permits we have on file and still can't find a permit for the former or current roof systems and shade structure. You had indicated that these new structures replaced older structures that were in disrepair. Barry Wolstencroft, our Chief Building Inspector, returns from vacation the middle of next week. I intend to meet with him to see if he recalls inspecting the former structures that you have replaced. I will get back to you once I've had a chance to talk to Barry and let you know if it will be necessary to reschedule your appeal hearing with the Board of Adjustment.

Thanks.

John

John O'Brien, Director
Community Development Department
928-204-7123

>>> "Rio Robson" <Rio@sonsilverwest.com> 11/3/2011 9:39 AM >>>
Dear John,

We would like to defer our December 3rd appeal.

Thank you
Rio Robson
----- Orig
inal Message -----
From: "John O'Brien" <JO'Brien@sedonaaz.gov>
To: <Rio@sonsilverwest.com>

Cc: "Kathy Levin" <KLevin@sedonaaz.gov>; "Mike Raber" <MRaber@sedonaaz.gov>
 Sent: Thursday, October 06, 2011 10:46 AM
 Subject: Your Recent Letter on Son Silver West Received on October 4, 2011

Hi Rio,

I received your recent letter regarding your proposed use of APN 401-31-011 for a parking lot and APN 401-31-016 for office space and employee parking. We have discussed this issue in the past, and to reiterate, it is not possible to do what you propose without amending the Community Plan and obtaining a rezoning.

APN 401-31-011 is zoned Single Family Residential. It is my understanding that ADOT used this property as a temporary staging area during construction of the SR 179 project, but ADOT did not convert this property into a "non-residential plot" as you state in your letter. ADOT does not have the authority to change zoning within the City of Sedona. Only the City Council has the authority to rezone property. ADOT and the City did allow you to use a small portion of this property for access to the adjoining Son Silver West parking lot, but the property was not rezoned for a non-residential use or allowed to be used as a parking lot. I've attached my May 2, 2008 letter that I sent to you regarding this issue.

APN 401-31-016 is zoned Single Family Residential. A Community Plan Amendment and rezoning would be required to use this property for office space and employee parking.

As I have mentioned before, I feel you should work through the current Community Plan Update process in an attempt to redesignate these properties for non-residential use. If this is successful, then you would have to apply for a rezoning through the Planning and Zoning Commission and City Council.

John

John

O'Brien, Director
Community Development Department
928-204-7123

Date: 21-Dec-2011 16:57
From: John O'Brien <JO'Brien@sedonaaz.gov>
To: rio@son
silverwest.com <rio@sonsilverwest.com>
Subject: Son Silver West Status
Attachments:

MESSAGE TEXT (1835 bytes)

Forwarded: No

=====
=====

Hi Rose and Rio,

I have been giving your building permit situation at Son Silver West some thought lately and how we might proceed. Rather than get into some long drawn out enforcement action based on what you might have or might not have constructed at Son Silver West over the years, here is how I would like to proceed:

1. You have already shut down the coffee shop and this was my primary concern. I appreciate you taking care of this issue.
2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building. You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.
3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.
4. By March 1, 2012, I am requesting that you provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

I feel this is a fair compromise to resolve this situation. Please let me know your thoughts.

Thanks.

John

John O'Brien, Director
Community Development Department
928-204-71

The redacted document in question was written by then Community Development Director John O'Brien. It was attached as a word document to an email (see below) dated 5-9-2012. The document was labeled "Project Status Information May 2012". John sent this to several staff members a little less than 2 months before retiring, sharing his thoughts on a number of projects and issues throughout the city. The City Attorney redacted everything that did not pertain to Son Silver West. The following is the text of the email that the document was attached to:

Hi Tim,

I provided the attached to Audree to help with some history of projects. Please disregard typos as I wrote this in a hurry! I hope this is helpful!

John

John O'Brien, Director
Community Development Department
928-204-7123

I hope this clears up Mr. Seeley's concerns,
Nicholas Gioello

Nicholas R. Gioello, M. Adm.
Development Services Manager

Community Development Department

City of Sedona

102 Roadrunner Dr.
Sedona, AZ 86336

Office: 928-203-5100
Fax: 928-204-7124
ngioello@sedonaaz.gov

Be a Fan on Facebook: www.Facebook.com/CityofSedonaAZ

>>> David Jakim 9/23/2014 9:19 AM >>>

Nick,

This is from the requestor on the Son Silver West records request. (File in question attached) Please advise.

Thanks,
David

"...However, one of the files you provided is missing essential information. The file is identified as CD_20140919154321.pdf. It is heavily redacted - so much so that there is no information about who wrote it, to whom it was written, or even when it was written. Without all of that basic information the file is useless. Please include this information ASAP. As provided I wonder if it meets the requirements of the law."

Thank you again for your help.

Respectfully,
Darrell Seeley

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Son Silver West

The owners are notorious for constructing buildings and other improvements without permits and asking for forgiveness later. They are a legal non-conforming use in a residential zone. They have a residential property located to the south of the existing parking lot that they want to use as parking, but need a CP amendment and zone change for this. This needs to be watched because they tend to illegally use this property for parking when City staff is not looking, especially on the weekends. Rio Robson is supposed to get us a notebook of photographs of the property showing all of the existing improvements. He needs to date these photos and provide them to staff so

we know exactly what they have now in place and what is legal non-conforming.....so the next time they building without permits, we will know what is legal and what is illegal. I have asked for this for several months and Rio has said "he will get to it soon" for at least four months.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Parking

Open
9:00 Am - 7:30 PM
7 Days A Week

"Wagon Wheel Camp"

Open
9:00 AM - 7:30 PM
7 Days A Week



Whispering Willow Canyon

Chapel
Gift Shop

Father
-Kimo

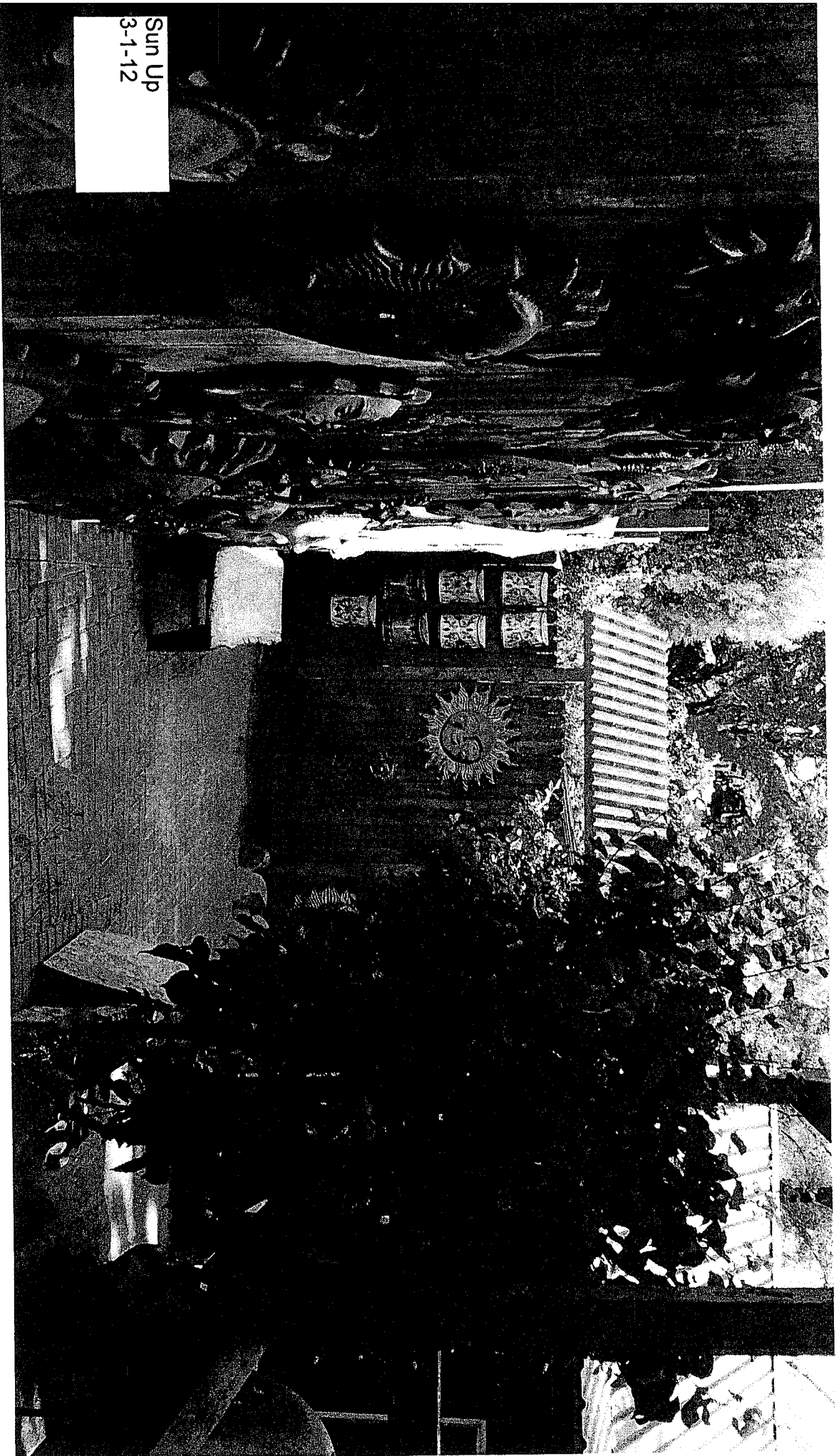
Chapel

Patio
Vortex

Su Can

Formative

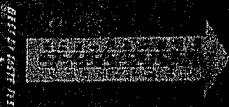
Sun Up
3-1-12





Pepper
COAL
SERVICE

ROYAL CROWN
COLA



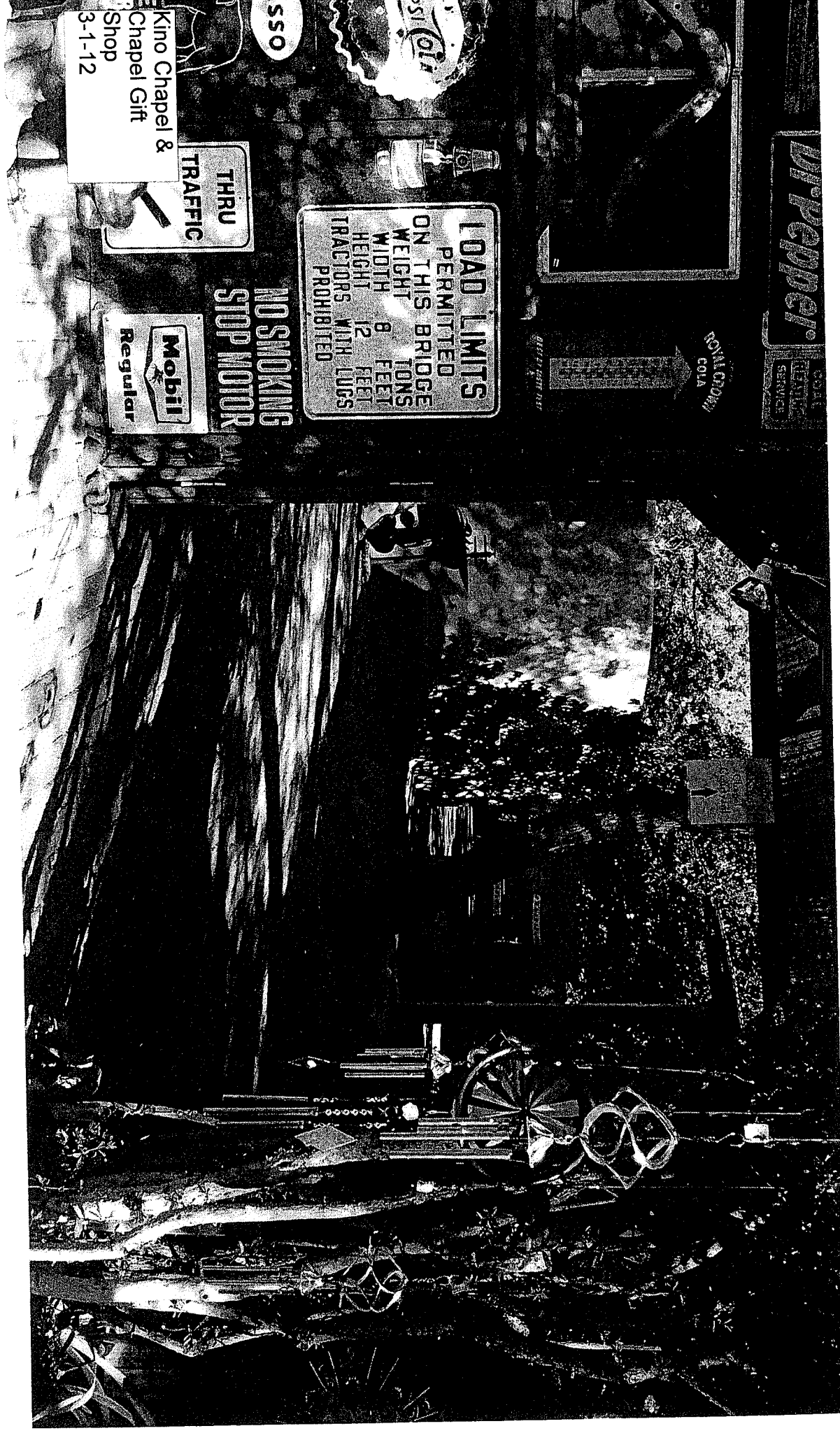
LOAD LIMITS
PERMITTED
ON THIS BRIDGE
WEIGHT 8 TONS
WIDTH 8 FEET
HEIGHT 12 FEET
TRACTORS WITH LUGS
PROHIBITED

THRU
TRAFFIC

Mobil
Regular

NO SMOKING
STOP MOTOR

Kino Chapel &
Chapel Gift
Shop
3-1-12

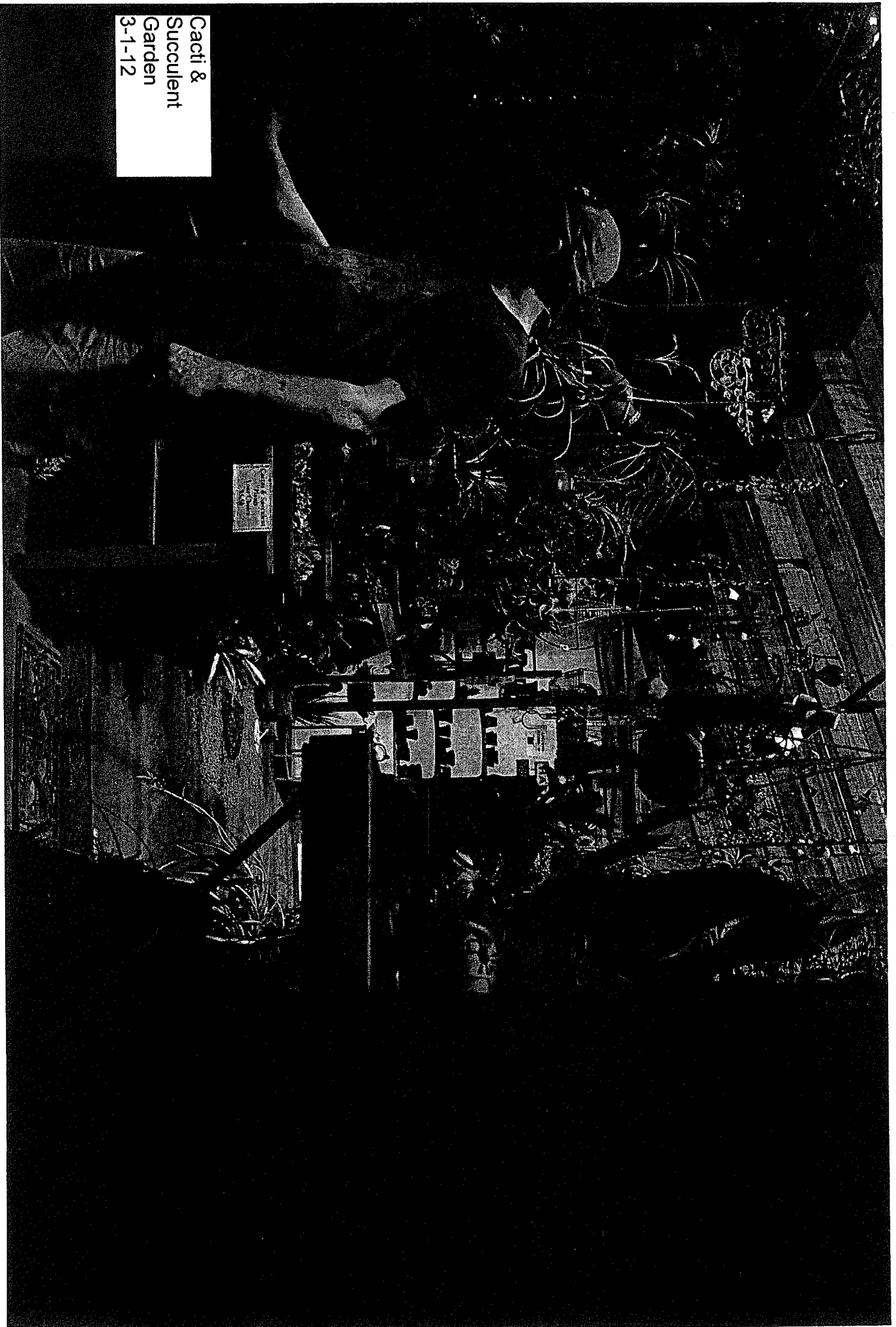


A black and white photograph of a church interior. In the foreground, a wooden altar is visible with a sign that reads "Please Watch Your Padre Kino Chapel". To the right, a sign on the wall points towards the entrance and reads "In Sedan". A large window in the background shows a view of the outside. A sign on the floor reads "LIFE". The image is oriented horizontally on the page.

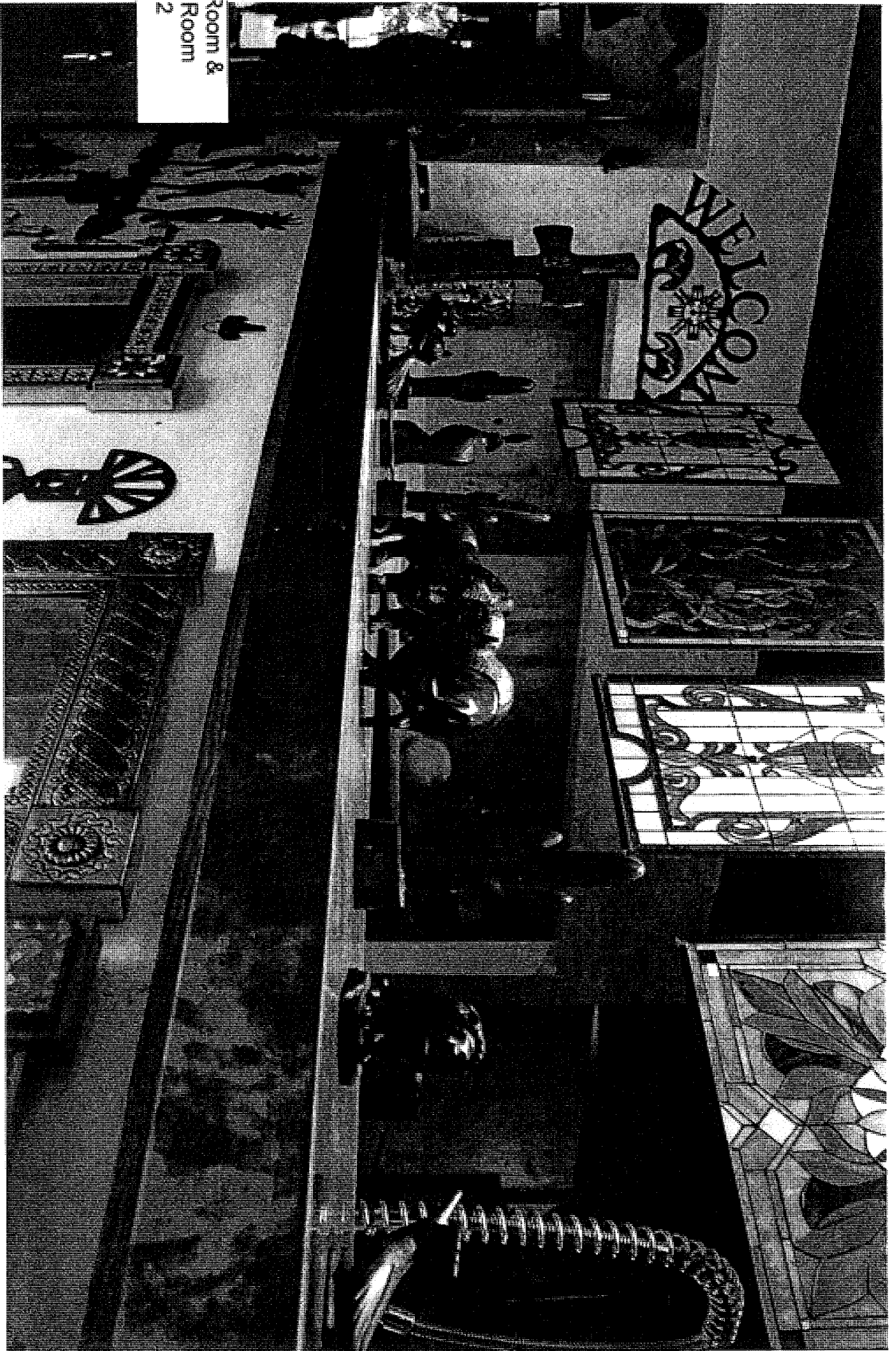
Wind Mill Alley
3-1-12



Cacti &
Succulent
Garden
3-1-12



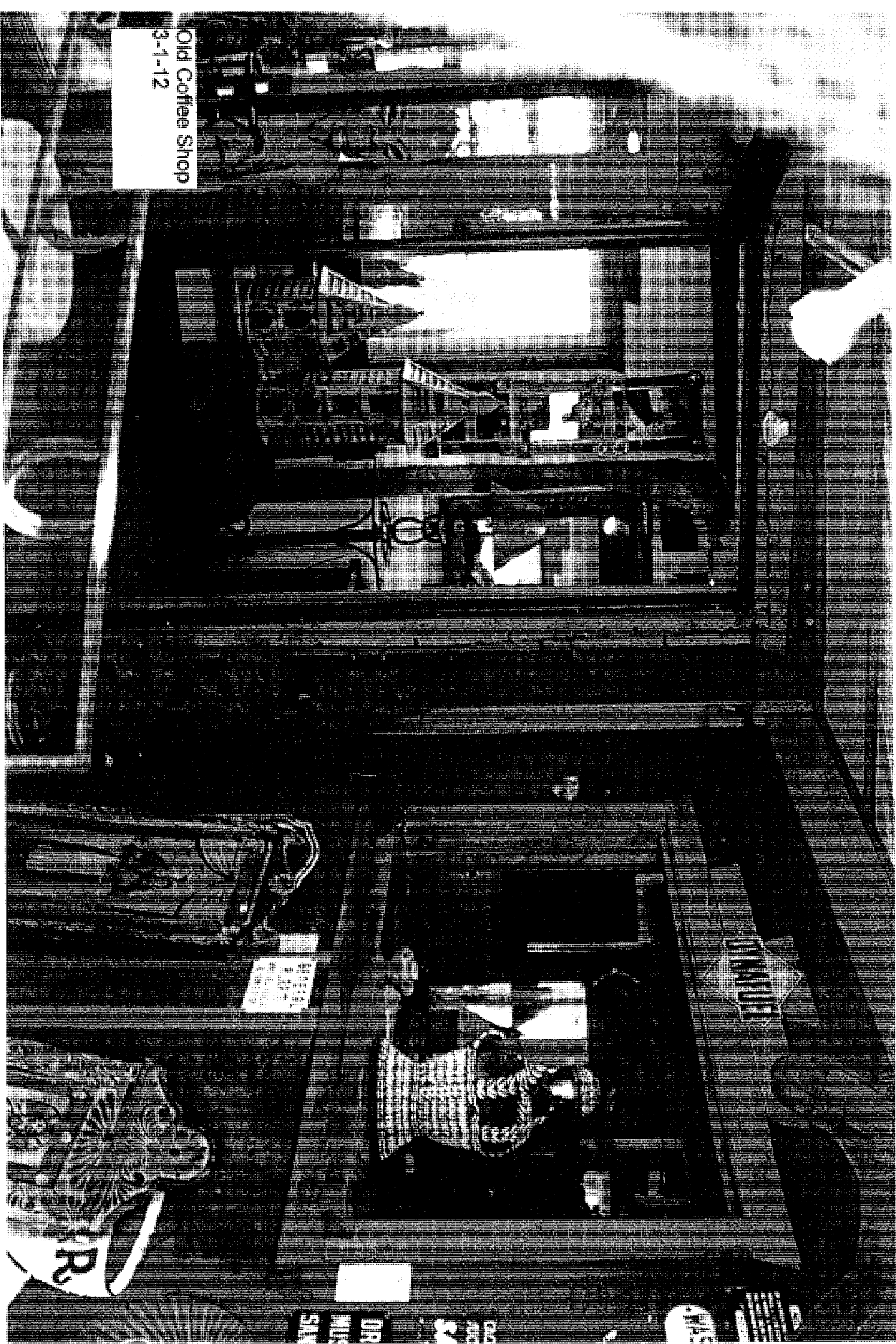
Klin Room &
Rest Room
3-1-12

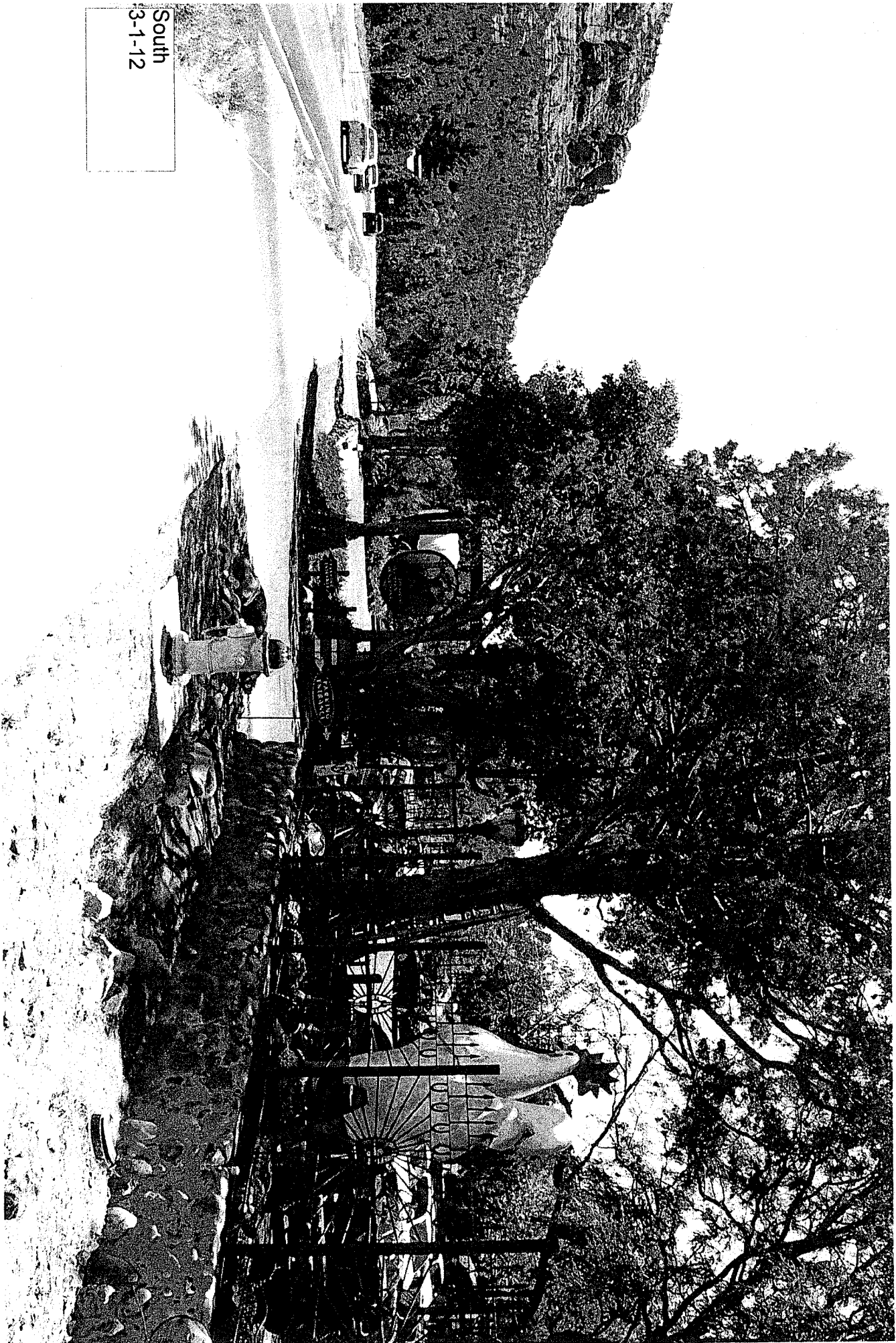




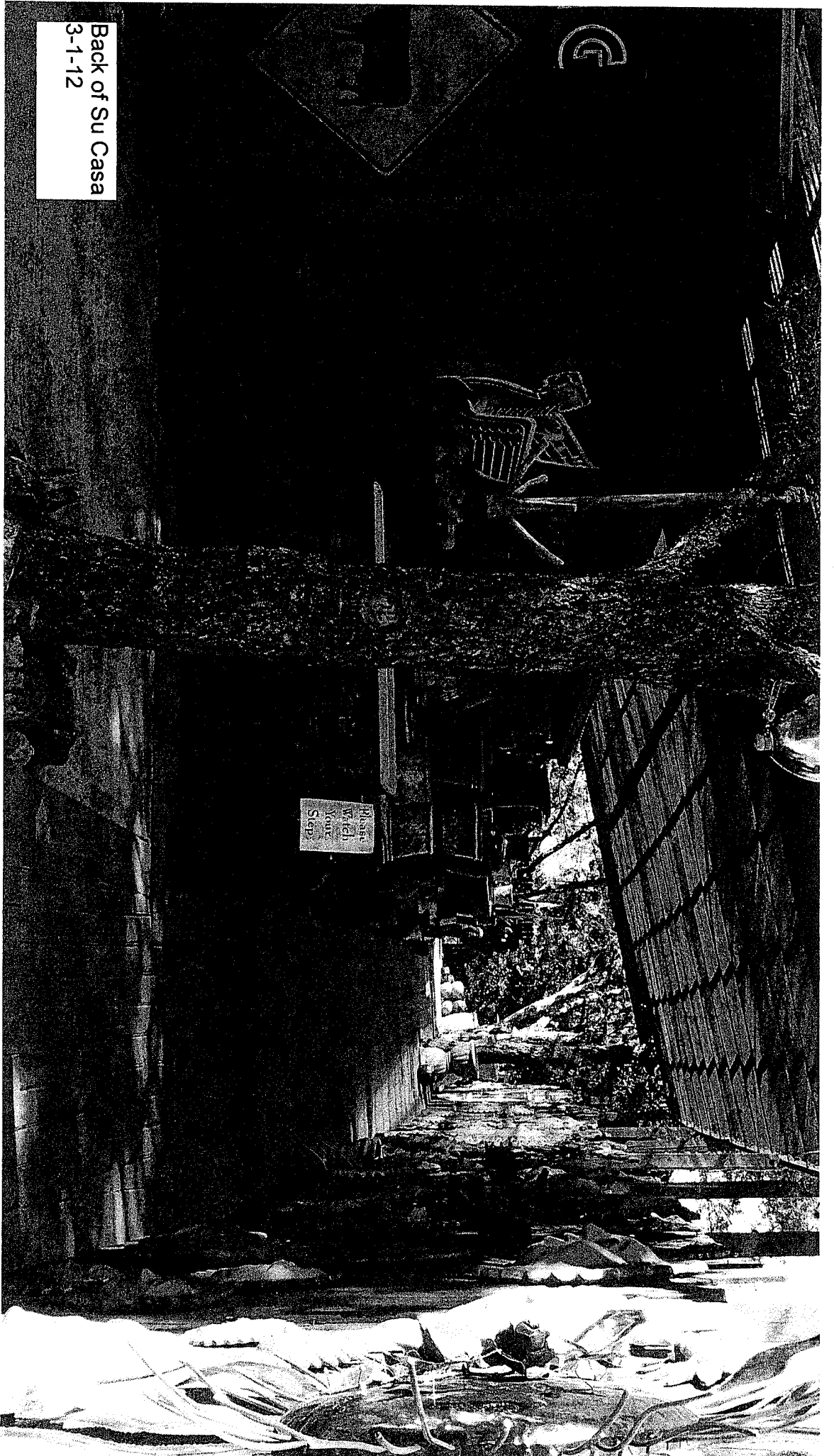
Walk Way To
Vortex
3-1-12

Old Coffee Shop
3-1-12



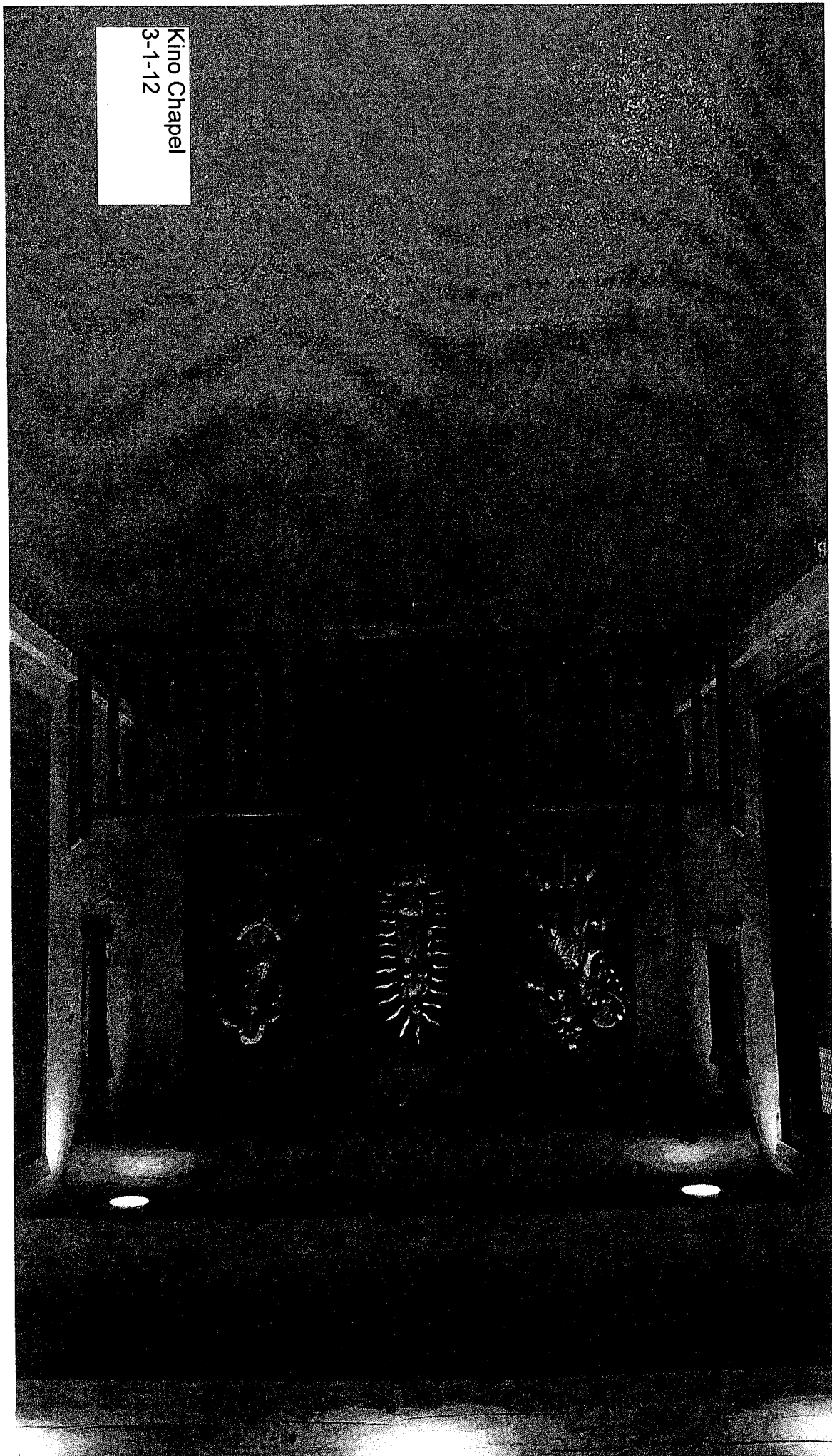


South
3-1-12



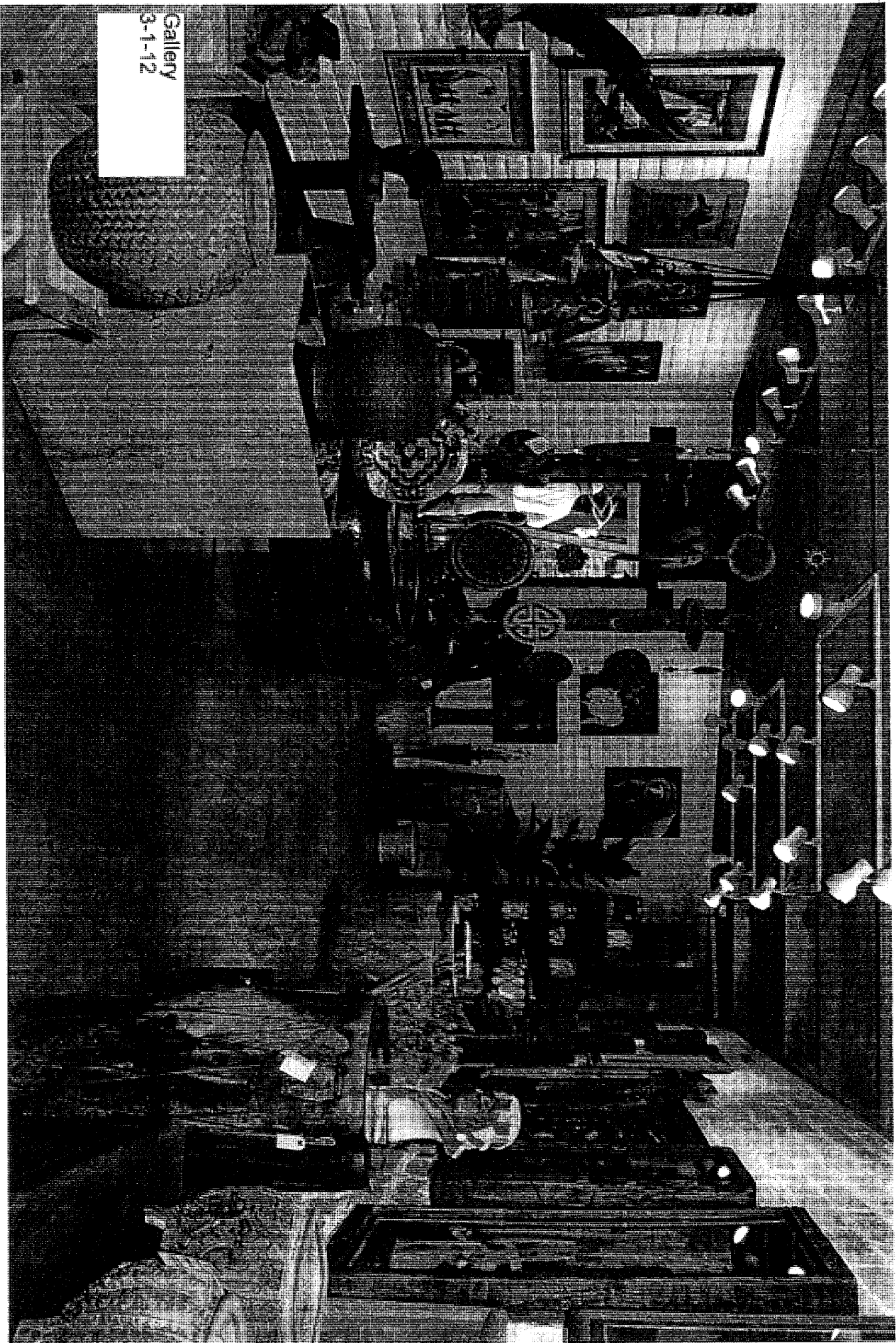
Back of Su Casa
3-1-12

Kino Chapel
3-1-12



Patio Vortex
3-1-12





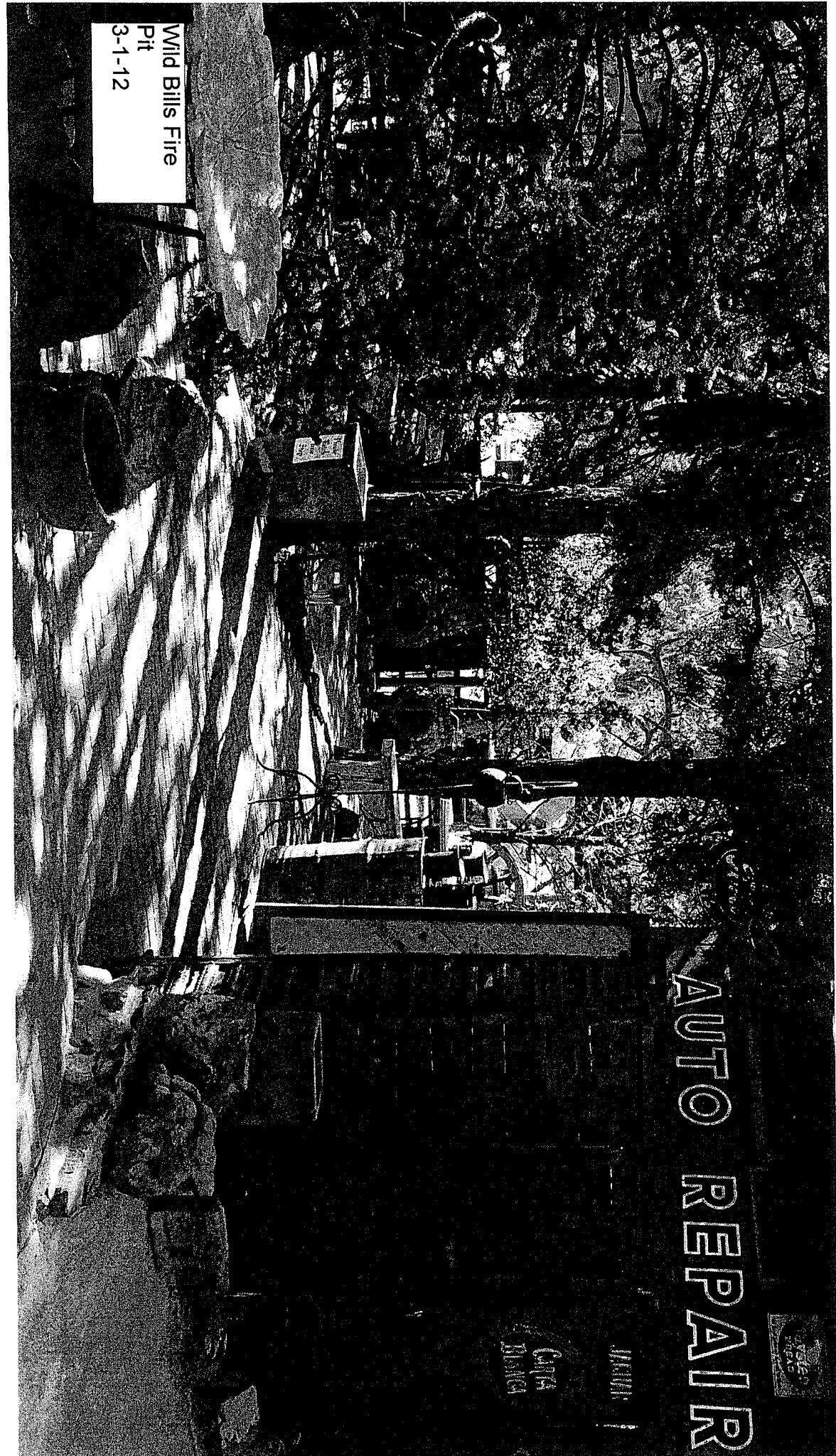
Gallery
3-1-12



AUTO REPAIR

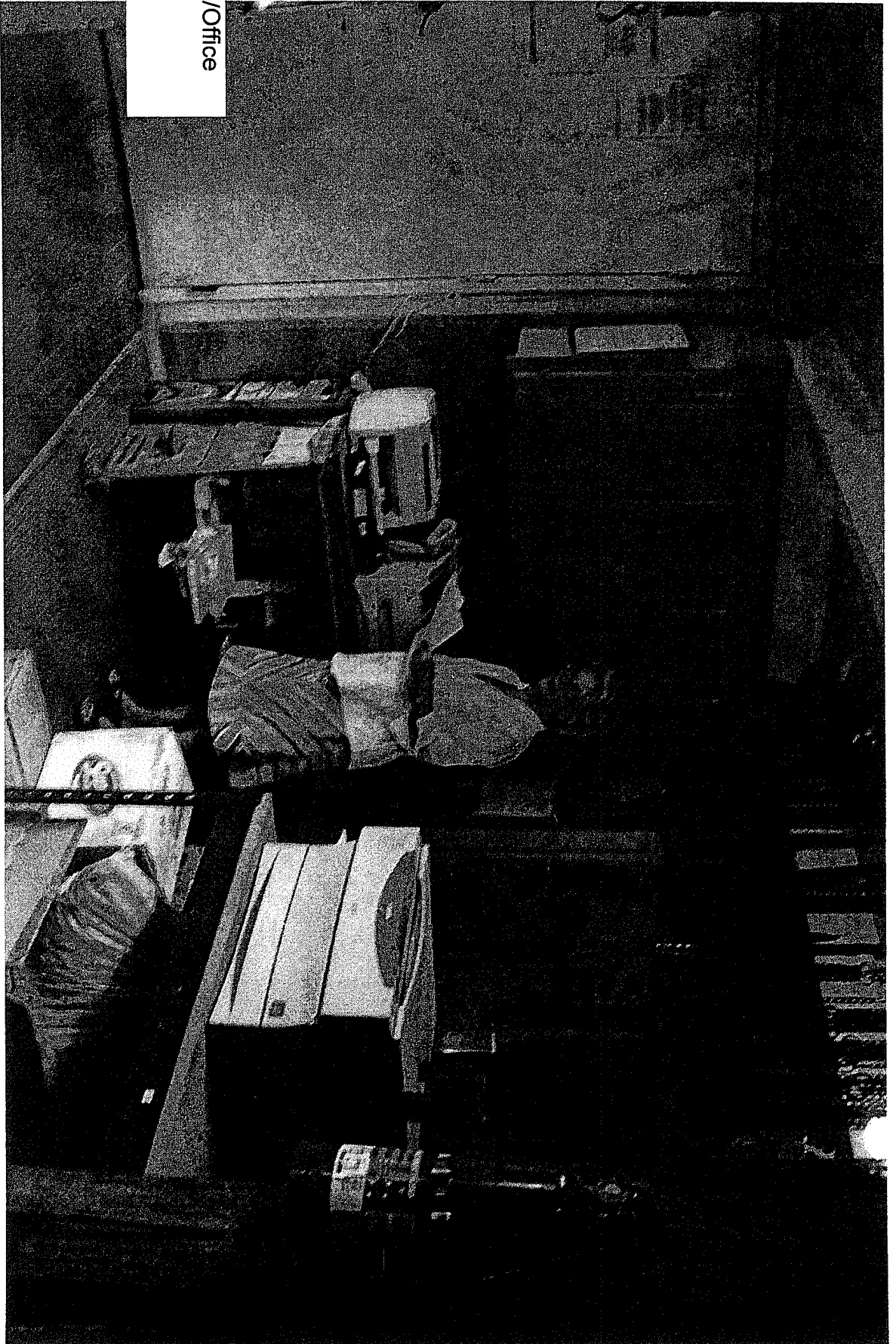
1000

Car
Data

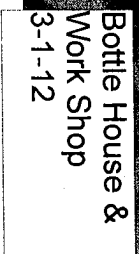


Wild Bills Fire
Pit
3-1-12

House/Office
3-1-12



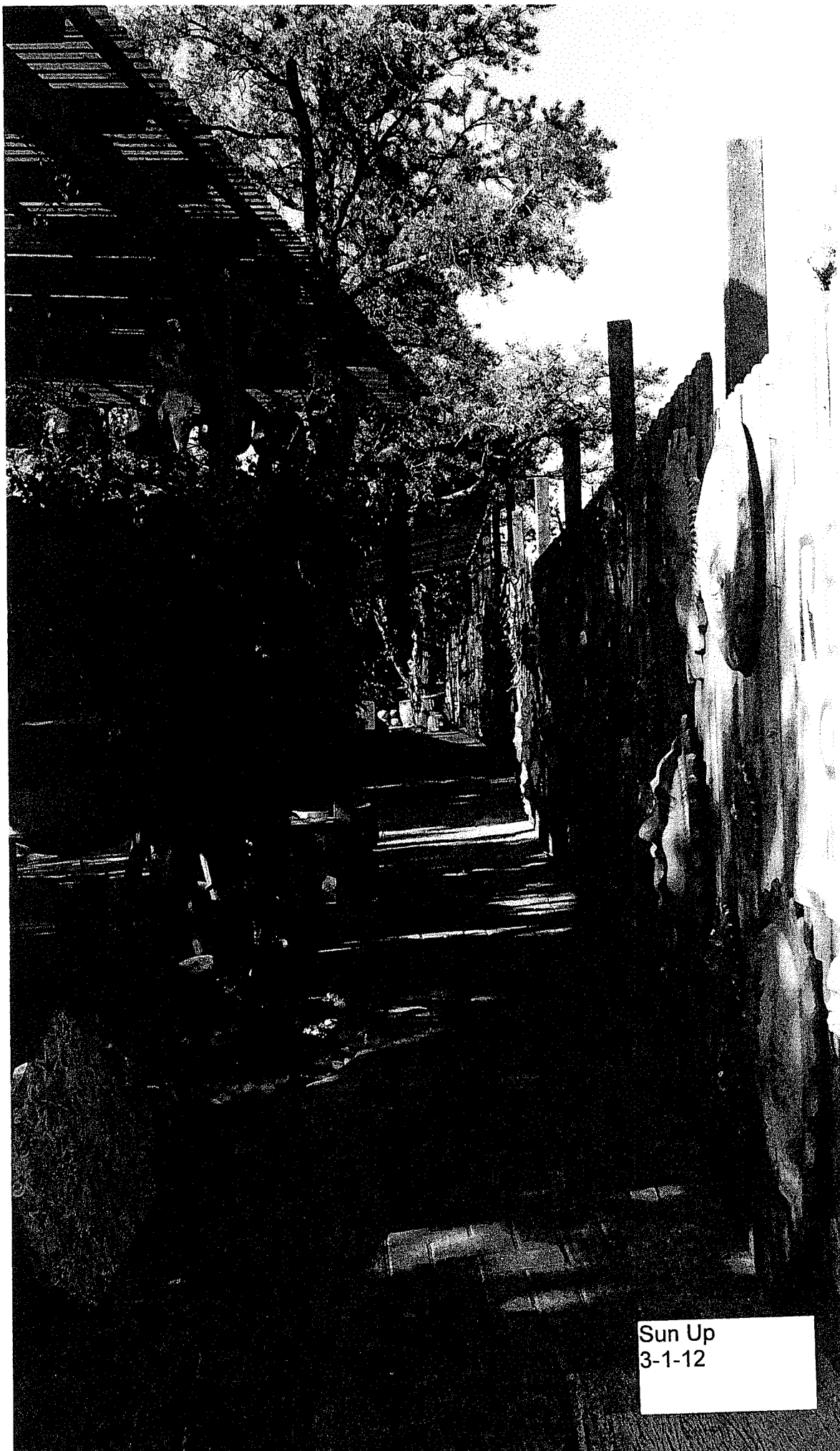
COMPANY OPERATED



**Bottle House &
Work Shop
3-1-12**



Front North
3-1-12



Sun Up
3-1-12



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

NOTICE OF VIOLATION

October 8, 2014

Son Silver West Gallery Inc.

Robson Design

C/O Rio Robson

1476 SR179

Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has determined that your businesses, Son Silver West Gallery Inc. and Robson Design are in violation of the Sedona City Code and the Sedona Land Development Code.

Because Son Silver West Gallery Inc. was operating as a commercial business on a single-family residential property (1476 SR 179, parcel #401-31-012A) prior to the City's incorporation in 1988, it is considered grandfathered as a legal non-conforming use. Based on review of City files, in 1992, Son Silver West Gallery representatives filed a Conditional Use Permit (CUP) application for consideration by the Planning and Zoning Commission. Because Son Silver West Gallery expanded its commercial use in 1989 without approval of a CUP, this request was necessary as the interim zoning code at that time did allow for the expansion of a legal non-conforming use with the approval of a CUP. The CUP was approved by the Planning and Zoning Commission on September 15, 1992 subject to conditions of approval.

Subsequent to the approval of the CUP, the City of Sedona changed the non-conforming use section of the Sedona Land Development Code and no longer allowed the expansion of legal non-conforming uses through the approval of a CUP. As explained to you in the past by former Director, John O'Brien, a legal non-conforming use which was lawful prior to the adoption of the City's Land Development Code but is unlawful by the use regulations for the zoning district, may continue only in the manner and to the extent that it existed at the time of the adoption of the Land Development Code. Based on Section 1204 (Non-Conforming Uses) of the Sedona Land Development Code, a grandfathered use cannot expand unless the expansion conforms to the regulations specified for the zoning district in which it is located. When a non-conforming use occupies a building, expanding the use into additional buildings or land areas is prohibited.

Unfortunately, at some point in time, after approval of the CUP in 1992, the Son Silver West Gallery once again expanded beyond its allowable area and without seeking approvals for these expansions. The expansion including the use of three nearby single-family residential properties zoned RS-18b. It is staff's understanding based on visual observations and comments you made during our meeting with you on Tuesday, September 23, 2014 that you are using the single-family residential property at 61 Arrow Drive, (parcel #401-31-016) as a warehouse and manufacturing site for both Son Silver West Gallery Inc. and Robson Design. It was also observed and verified by you that you are using the 365 Bowstring Drive property (parcel #401-31-020) for employee parking and the vacant lot at 1535 SR179, (parcel #401-31-011) for "over-flow" parking for Son Silver West Gallery customers. The existing zoning



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

for these three single-family residential lots (RS-18b) does not allow for these commercial uses. As indicated above, Section 1204 of the Land Development Code states that a legal non-conforming use cannot expand unless the expansion is in conformance with all applicable Codes. Because commercial activities are not allowed in the RS-18b single-family zoning district, this expansion is in violation of the Land Development Code, Article 6 (District Regulations) Section 605 (RS018b Single-Family Residential District) and Article 12 (Nonconforming Situations) Section 1204 (Non-Conforming Uses). While the RS-18b zoning district does have provisions for home occupation uses as set forth in Article 9 (Development Standards) Section 915 (Home Occupation Uses) of the Land Development Code, as we explained to you on September 23, 2014, your current use of these properties is not in conformance with and far exceeds these regulations.

On a related note, Section 5.05.020 requires that all businesses must be in compliance with any and all regulations specified in the Sedona City Code, Sedona Land Development Code, and Arizona Revised Statutes. Compliance includes but is not limited to compliance with any and all zoning ordinances and specified building uses. Per Section 5.05.040(A) of the Sedona City Code, a business license may be suspended, revoked or deemed invalid if it is determined that a business owner has violated or is not in compliance with either the City Code, Land Development Code or the Arizona Revised statutes, or that the business is delinquent in paying taxes or fees to the City. Because you are not currently in compliance with this section due at least in part to the below-referenced violations of the Sedona Land Development Code, your business license is subject to revocation and your right to continue to do business within the City can be lost if you do not come into complete compliance.

VIOLATIONS:

- Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses). Son Silver West Gallery Inc.'s unauthorized expansion onto neighboring single-family properties (61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179) is in violation of the Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses) – expansion of a non-conforming use.
- Sedona Land Development Code, Article 6 (District Regulations). The use of neighboring single-family properties (61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179) is a violation of Sedona Land Development Code, Article 6 (District Regulations) where the single-family zoning designation (RS-18b) does not allow for commercial uses, except as provided in the Home Occupation ordinance. The current use of these properties is not in conformance with the home occupation provisions.
- Title 5 (Business Licenses). You are in violation of Sedona City Code, Title 5, (Business Licenses and Regulations) by virtue of the fact that you are not complying with any and all regulations set forth in the Sedona City Code, Sedona Land Development Code and the Arizona Revised Statutes. Because of this fact, your business license may be suspended, revoked or deemed invalid.

CORRECTIVE ACTION NECESSARY:

Immediately cease all commercial activities at 61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179. If you wish to use these properties in the future for commercial purposes, please schedule a meeting with Community Development staff to discuss your options. You do have the option to file for a major amendment to the Sedona Community Plan and a rezoning of the single-family residential properties to general commercial. In accordance with Arizona State Law, major amendments to the Community Plan are considered once per year and our next application submittal is tentatively scheduled for April 2015. The Planning and Zoning Commission and City Council would consider the



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major amendment application in the summer and fall of 2015. Your zone change application could also be filed at the same time as the major amendment. Additionally, Staff can also discuss with you the Community Focus Areas specific planning process as outlined in the new Sedona Community Plan as another option for your consideration.

PENALTIES:

Failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audrey Juhlin, Director

Community Development Department

cc: Nick Gioello, Development Services Manager
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Sedona Police Chief
Mike Goimarac, Sedona City Attorney
Tim Ernster, Sedona City Manager

MEMORANDUM

TO: Sedona City Attorney Robert Pickels, Jr., and City Manager Justin Clifton

COPY: Community Development Director Audree Juhlin

FROM: Francis J. Slavin and Heather Dukes

DATE: September 22, 2015

RE: **Son Silver West Located at 1476 State Route 179, Sedona, Arizona; Legal Memorandum Providing Opinion Regarding the Following Issues:**

- (1) Whether the owners of Son Silver West enjoy vested rights with regard to the construction of the southernmost building on Tract 41, the current parking configuration on Tract 41, and the existing outdoor retail space on Tract 42 along SR 179 as well as the approximate 30-foot area along the north property line of Tract 41 as a result of the:
 - (i) September 29, 1993 Decision by Director Tom Schafer approving the Son Silver West site plan and parking plan as being in general conformance with the Conditional Use Permit,
 - (ii) City's issuance of building permits related thereto, and
 - (iii) Robson's good faith reliance thereon as demonstrated by their substantial work and incurrence of substantial expenditures to complete the construction of these improvements;
 - (2) Whether the December 21, 2011 decision by Director John O'Brien regarding Son Silver West Property was an exercise of the Director's interpretation and enforcement authority as delegated by state zoning enabling statutes and Sedona Land Development Code ("LDC");
 - (3) Whether Director John O'Brien's decision may not be challenged by aggrieved persons as a result of their failure to exhaust administrative remedies;
 - (4) Whether the City is equitably estopped from repudiating the December 21, 2011 decision by Director John O'Brien; and
 - (5) Whether the City of Sedona has the authority to accept and process as a minor amendment to the Community Plan a change in the land use designation of the 0.48-acre Vacant Tract 40 from Single Family Residential to Commercial in order to allow customer and employee parking for Son Silver West.
-

On behalf of our clients, Son Silver West, Inc., William B. and Linda Rose Robson, and Rio Robson (hereinafter "**Son Silver West**" and the "**Robsons**"), Francis J. Slavin, P.C. hereby submits this legal memorandum addressing the issues referenced above with regard to the following properties:

**PROPERTIES OWNED BY ROBSONS WITHIN BROKEN ARROW SUBDIVISION
LYING ALONG WEST SIDE OF SR 179 & SOUTH OF ARROW DRIVE-MORGAN ROAD ROUNDABOUT**

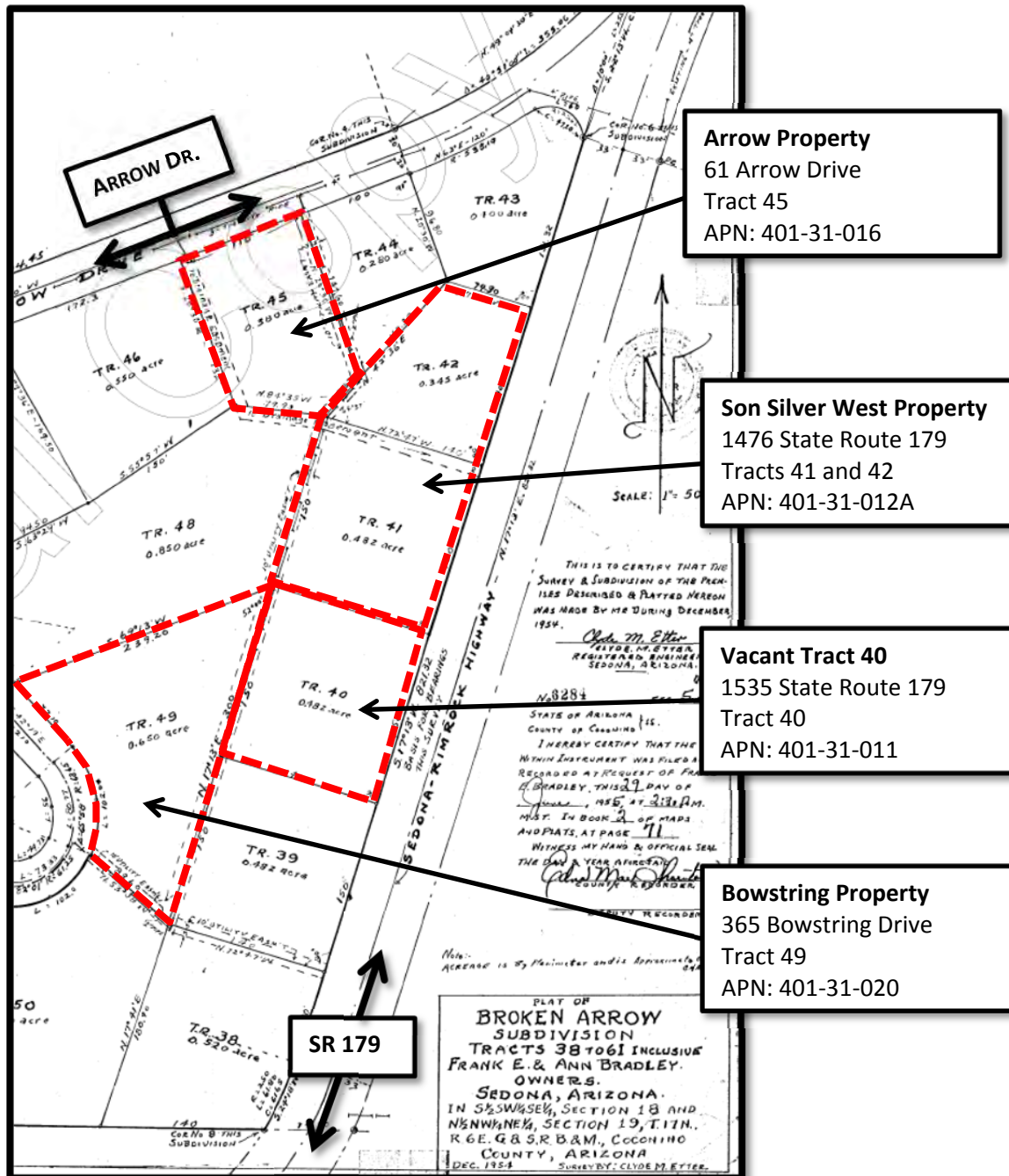
Address	Assessor's Parcel No.	Broken Arrow Tract No.	Parcel Size	Property Owner	Referenced Terms in this Memorandum
1476 State Route 179	401-31-012A	Tract 42 & 41	0.83 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to collectively as " Son Silver West Property " or individual tracts as " Tract 42 " & " Tract 41 "
1535 State Route 179	401-31-011	Tract 40	0.48 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to as " Vacant Tract 40 "
61 Arrow Drive	401-31-016	Tract 45	0.38 ac	Rio Cody Robson	Referred to as " Arrow Parcel "
365 Bowstring Drive	401-31-020	Tract 49	0.65 ac	Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999	Referred to as " Bowstring Parcel "

I. STATEMENT OF FACTS

Our firm provides the following abbreviated statement of facts with regard to Son Silver West based upon records that were made available on the City of Sedona website and records provided by our clients. At this time, we have outstanding public records requests with the City of Sedona and Coconino County. If in the future, any new information or documents relevant to the issues addressed in this memorandum are discovered, our firm may provide a supplemental memorandum to the City of Sedona.

1. **The Broken Arrow subdivision plat was recorded on June 29, 1955 at Book 2 of Maps Page 71, Official Records of Coconino County Recorder's Office ("CCR") (hereinafter the "Broken Arrow Plat").¹ The following lots designated on the Broken Arrow Plat are currently owned by the Robsons:**

BROKEN ARROW PLAT, BOOK 2 OF MAPS, PAGE 71



¹ Broken Arrow Plat is attached hereto as **Exhibit "1"**.

2. **Deed Restrictions for the Broken Arrow subdivision were recorded on July 21, 1955** in Book 77, Page 509, CCR.² The Deed Restrictions state in part as follows:

9. The forgoing restrictions and covenants run with the land and shall be binding on all owners of said Tracts and all persons claiming under then [sic] until January 1, 1966, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a majority of the then owners of the Tracts, it is agreed to change the said covenants in whole or in part.

...

13. The business district shall be confined to those Tracts numbered 38 to 44 inclusive, fronting on Sedona Rimrock Highway.

As set forth in Paragraph 13 of the Deed Restrictions, the developer of the Broken Arrow subdivision contemplated business uses on tracts lying along the west side of State Route 179, including the Son Silver West Property and Vacant Tract 40.

3. **In 1960, buildings were constructed and the former "La Galleria" began operating as a commercial art gallery with outdoor retail space on Tract 42** by Mary Ernestine Nestler Todd and her late husband.³ The La Galleria was in operation prior to Coconino County adopting its first zoning ordinance and initiating residential zoning for Tract 42 in 1964.⁴ Thus, the gallery and its primary structures on Tract 42 have operated as a legal non-conforming use since 1964.⁵

According to a letter from Ms. Todd to former Sedona Community Development Director Tom Schafer dated February 2, 1990⁶, during the Todd's ownership of La Galleria from 1960 to 1981, the Todds "conducted the outdoor display of pottery, chimes, chilies, and southwestern art-and-craft items." Ms. Todd also states in her letter that the "outdoor display area and gallery presently

² See Deed Restrictions attached hereto as **Exhibit "2"**.

³ See "Background" section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached hereto as **Exhibit "3"**.

⁴ *Id.*

⁵ *Id.*

⁶ See Letter from Ms. Todd to Director Tom Schafer attached hereto as **Exhibit "4"**.

maintained by the Robsons is compatible with that which was done at that location in my previous business.”

4. **In 1964, Coconino County adopted its first zoning ordinance and initiated C-RS-18,000 (Single Family Residential) zoning for all property located within the Broken Arrow subdivision, including the La Galleria on Tract 42.**⁷ The initial zoning of Tract 42 to a single family residential zoning district rendered the La Galleria commercial art gallery and associated outdoor retail display areas a legal non-conforming use under Ariz. R. Stat. § 9-462.02(A).
5. **On January 20, 1981, Tract 42 and the La Galleria were purchased by William B. and Linda Rose Robson** by Joint Tenancy Deed recorded in Book 820, Page 872, CCR.⁸ At the time of the Robson’s purchase, the commercial gallery and associated retail uses on Tract 42 remained a legal non-conforming use within the unincorporated territory of Coconino County. The City of Sedona was not incorporated until 1988. From 1981 to the present, the Robsons have continuously operated the commercial art gallery and associated retail uses as a legal non-conforming use, renaming the “La Galleria” as “Son Silver West.”
6. **On March 4, 1987, William B. and Linda Rose Robson purchased Tract 41** by deed recorded in Book 1144, Page 786, CCR. At the time of the Robsons purchase, Tract 41 was located within the unincorporated territory of Coconino County.
7. **The City of Sedona was incorporated in January 1988.** Upon incorporation, the City of Sedona adopted an interim zoning code and placed residential zoning on the Son Silver West Property comparable to the existing Coconino County C-RS-18,000 zoning district.
8. **On August 16, 1991, the City of Sedona approved Son Silver West’s plans to erect a chili cage on Tract 42 on the east side of the existing gallery building along Highway 179.**⁹
9. **On November 26, 1991, the Sedona City Council adopted the first Sedona Community Plan which designated the Son Silver West Property as**

⁷ See “Background” section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached hereto as **Exhibit “3”**.

⁸ Joint Tenancy Deed conveying Tract 42 from Mary Ernestine Nestler Todd to William Robson and Linda Rose Robson attached hereto as **Exhibit “4”**.

⁹ See approved Chili Cage Plan, attached hereto as **Exhibit “5”**.

Commercial on the Land Use Map.¹⁰ As recently as July 2015, the Vision Statement from the original 1991 Community Plan was adopted and re-affirmed by the Sedona City Council.¹¹ The following provisions within the 1991 Vision Statement remain relevant today and were supported by a commercial land use designation for the Son Silver West Property and the existing art gallery, art production and associated commercial retail uses:

To be a City that is animated by the arts, and lives with a spirit of volunteerism to help achieve our common goals.

To be a City that welcomes and accommodates all of its visitors and future residents with a spirit of fellowship.

To be a City that retains and enhances a strong and vital economy which preserves existing lifestyles without exploiting the natural beauty.

10. **On September 5, 1992, the Sedona Planning and Zoning Commission approved Case No. CUP 92-3, granting a conditional use permit for the Son Silver West Property which allowed expansion of the Son Silver West legal non-conforming use onto Tract 41** (hereinafter the “CUP”).¹² At the time of approval of the CUP, Section 204.01 of the Sedona Interim Zoning Ordinance provided for the expansion of non-conforming uses through the administrative approval of a conditional use permit by the Planning & Zoning Commission.

As part of the Robson’s CUP application, a schematic site plan was prepared by Shephard–Wesnitzer, Inc. dated April 4, 1992, Job No. 91038 (the “**1992 Plan**”) which showed the following improvements and uses as of April of 1992: (1) the existing gallery, retail and work shop structures on the Son Silver West Property, (2) the proposed relocation of the parking lot from Tract 42 to Tract 41 and

¹⁰ See “Analysis” section of Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992, page 6, attached hereto as **Exhibit “6”**.

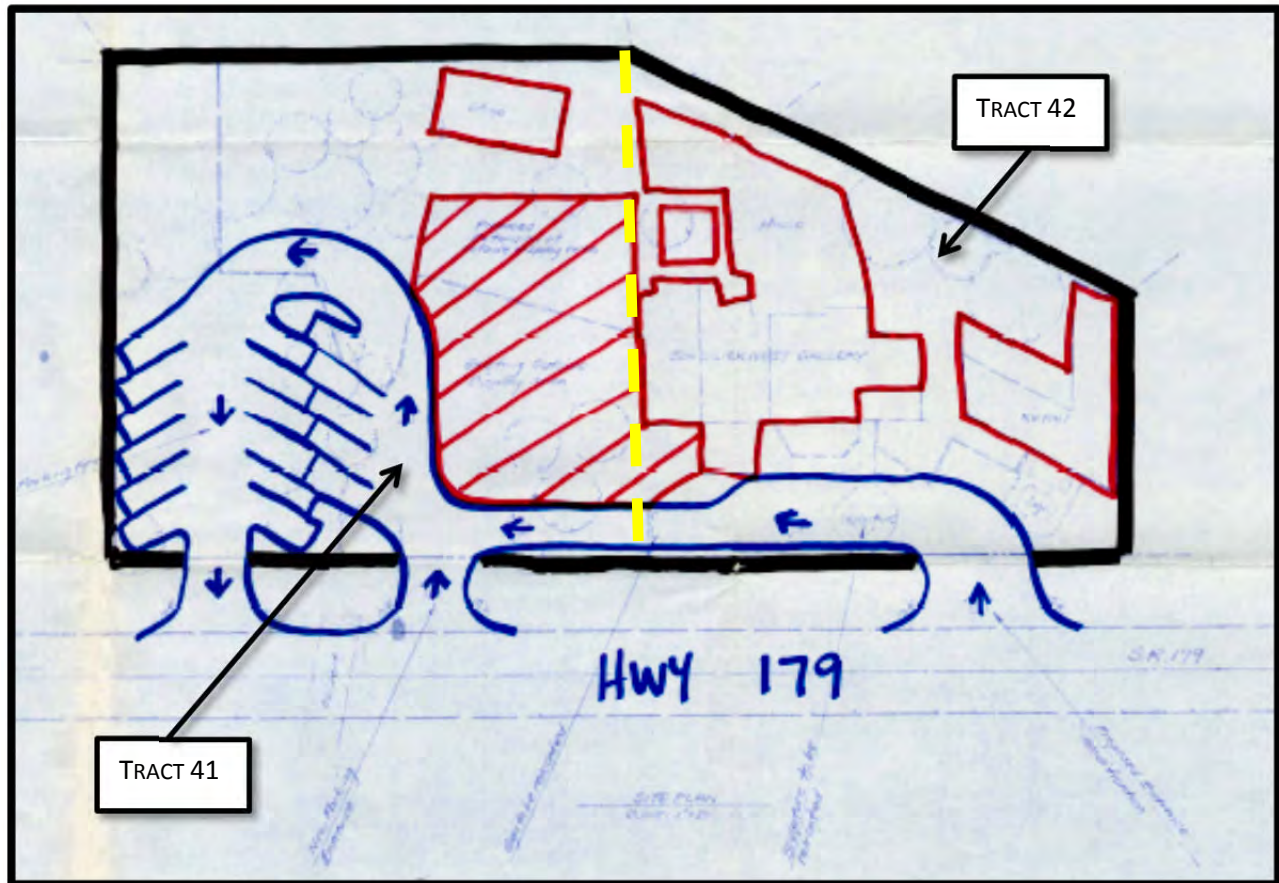
¹¹ See Sedona Resolution No. 2015-20 adopted by Sedona Mayor and City Council on July 28, 2015, attached hereto as **Exhibit “7”**.

¹² See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached hereto as **Exhibit “3”**; See also Minutes from the September 15, 1992 Planning and Zoning Commission hearing attached hereto as **Exhibit “8”**; See also Letter from Sedona Associate Planner John O’Brien to Robsons dated September 21, 1992 attaching final conditions of approval for Case No. CUP 92-3, attached hereto as **Exhibit “9”**; See also Site Plan prepared by Shephard–Wesnitzer, Inc. dated April 4, 1992, Job No. 91038, submitted by Robsons to City of Sedona and approved as part of CUP 92-3 as “Alternative Site Plan #2”, attached hereto as **Exhibit “10”**.

reconfiguration of the on-site traffic circulation, and (3) the expanded outside display area in the northwest area of Tract 41. This 1992 Plan was submitted by the Robsons to the City of Sedona and was approved with a hand-drawn sketch as “**Alternative Site Plan #2**” as part of Case No. CUP 92-3 (shown below).¹³

ALTERNATIVE SITE PLAN #2 APPROVED WITH CUP 92-3 ON SEPTEMBER 15, 1992

***With FJS, PC Annotations Designating Tracts 41 and 42**

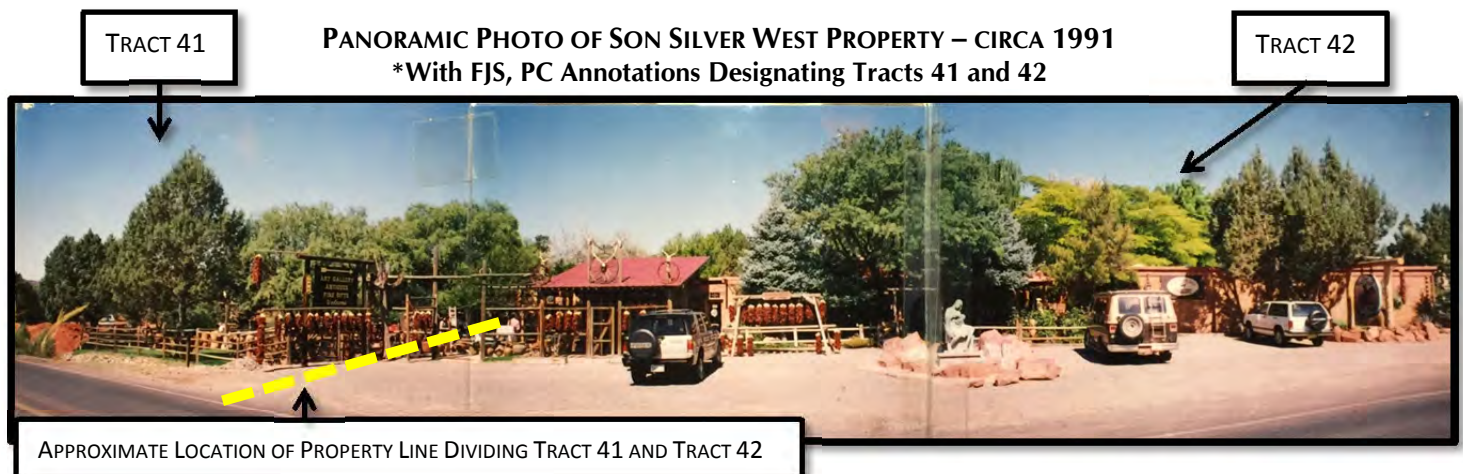


As discussed during our meeting on September 8, 2015, the City is questioning the extent of the current outdoor retail display area on the Son Silver West Property as compared to that permitted under the CUP approved in 1992. Setting aside the display areas approved by John O’Brien’s December 21, 2011 decision for a moment, after reviewing site plans, historical photographs and the September 15, 1992 staff report at length, we have determined that the CUP issued to Son Silver West permitted the 5,000 s.f. expansion of the outdoor retail display area on Tract 41 and did not address the existing outdoor retail display areas which had been maintained as a legal non-conforming use on Tract 42

¹³ See Site Plan prepared by Shephard-Wesnitzer, Inc. dated April 4, 1992, Job No. 91038, submitted by Robsons to City of Sedona and approved as part of CUP 92-3 as “Alternative Site Plan #2”, attached hereto as Exhibit “10”.

since 1960. Thus, the CUP did not limit the entire Son Silver West Property to 5,000 s.f. of outdoor retail display area. It limited the expansion of the existing outdoor display area on Tract 41 by 5,000 s.f. Our conclusion is supported by the following:

- Before the CUP approval in 1992, the Son Silver West outdoor retail display area was located on both Tract 41 and Tract 42, as shown by a historical panoramic photograph of the Son Silver West Property taken prior to the permitted relocation and reconfiguration of the parking area from Tract 42 to Tract 41 (circa 1991). As shown on the left side of the photograph, some of the outdoor retail display area was located along SR 179 on a grassy area of Tract 41. Outdoor retail display areas are also shown between the gallery building and former parking area on Tract 42. We are still attempting to compile additional photographs of the outdoor display areas located within the interior of Tract 42 prior to 1992.



- The 1992 Plan and Alternative Site Plan #2 showed the extent of the existing outdoor display area measuring approximately 60 feet in width located on the north side of Tract 41 lying south of the gallery which would be left untouched after the parking improvements were constructed. Neither the 1992 Plan nor the Alternative Site Plan #2 show the outdoor display areas that would be removed from the Tract 41 frontage as a result of the reconfiguration of the parking area and accessway. These plans also did not identify the existing outdoor display areas on Tract 42. Notably, the outdoor display area shown in the panoramic photograph located between the gallery building and former parking area on Tract 42 is not depicted. This is expected inasmuch as the site plan is titled "Parking Lot Expansion Plan and Access Modifications." The plan was limited in terms of identifying only those areas of the Son Silver West Property impacted by the proposed parking and access modifications.

- The staff report dated September 15, 1992 emphasizes that the CUP addresses the outdoor display areas on the “southern one-half” of the Son Silver West Property, which would have been Tract 41.¹⁴ The Summary Sheet for CUP 92-3 provides a parcel map with both Tracts 41 and 42 delineated and identifies the former APNs for both Tracts 41 and 42 as being the location of the property. Thus, the “southern one-half” of the property which was the subject matter of the legal non-conforming use expansion and CUP application would have been Tract 41. Specifically, the staff report states the following in support of our observation that the 5,000 s.f. outdoor retail display area was a limitation on the legal non-conforming use expansion on Tract 41 only:

The City of Sedona and the current property owners disagree about the legal establishment of the large outside display area associated with the business as well as other associated uses on the southern one-half portion of the subject property.

...

Alternative site plan #1 showsAlternative site plan #2 shows a 30-foot wide one-way drive, with no parking in front of the building. This drive would access the new 17 space lot on the southern one-fourth of the property. The new parking lot would also be accessed the same as site plan #1. Both plans discuss expansion and shifting of the existing outside display area.

...

Development Proposal

- Conditional use permit requested to allow for expansion of nonconforming use
- If approved, would allow for continued use of 5,000 square foot outside sales/display area with minor modifications, and construction of 17-space parking lot on southern one-fourth of property.

...

Recommendation

The current use of the southern one-half of the subject property, specifically the 5,000 square foot outside sales/display area has been the subject of City zoning enforcement actions for approximately three years.

¹⁴ See Sedona Community Development Staff Report to Planning and Zoning Commission regarding Case No. CUP 92-3 dated September 15, 1992 attached hereto as **Exhibit “3”**.

...

The applicant is pursuing an avenue of administrative relief (CUP request) which, if approved, would allow for the continued use of the disputed display area and the construction of a new parking area.

Emphasis added.

11. **On September 29, 1993, the former Community Development Director Tom Schafer approved a Site Plan, Highway 179 Paving & Striping Plan, and Parking Plan** prepared for the Son Silver West Property by Shephard-Wesnitzer, Inc. dated September 1993, Job No. 91038 (the “**1993 Plan**”).¹⁵ The 1993 Plan contains a City of Sedona Building Safety Division “Approved” stamp as well as large handwriting referencing “JOB B2582” and “B2524”. The “B2524” number is placed on top of a 13x45 building located at the southwest corner of Tract 41, evidencing the City’s issuance of a building permit for that structure.

The 1993 Plan approved by Director Schafer shows an approximate 30-foot wide outdoor retail display area lying along the north side of Tract 41 and south of the gallery building that was existing at the time of the CUP approval in 1992. Based upon the approximate 60-foot width of the outdoor display area shown on the prior 1992 Plan and Alternative Site Plan #2, it is obvious that the display area existing along the north side of Tract 41 at the time of the CUP approval was reduced by almost half in order to accommodate the new parking area on Tract 41. Not by coincidence, the 1993 Plan also shows outdoor retail “display areas” within the entire north-south area lying between the existing Tract 42 gallery and retail buildings on the west and the drainage channel abutting Highway 179 on the east. This additional outdoor display area shown on Tract 42 along Highway 179 on the 1993 Plan was relocated from the 5,000 s.f. outdoor display area approved along the north side of Tract 41 by the CUP. Thus, in 1993, Director Schafer approved these outdoor retail display areas as they currently exist today.

Again, the buildings and the outdoor retail display areas located interior to Tract 42 are not depicted on the 1993 Plan due to the nature of the plans. The 1993 Plans were submitted for issuance of building permits related to the new parking area on Tract 41, improvements to Highway 179, and the construction of a new building at the southwest corner of Tract 41. Providing a detailed plan of the existing improvements and uses within the interior of Tract 42 was not necessary for the issuance of these permits.

¹⁵ See 1993 Plan attached hereto as **Exhibit “11”**.

12. **As of June 7, 1994, the new parking lot had been constructed on Tract 41.**¹⁶
13. **On June 7, 1994, former Community Development Director Tom Schafer and the Robsons entered into an agreement with regard to the Robson's future compliance with CUP Condition Nos. 4, 6, 8, 9, and 10 as summarized below:**
- Condition No. 4 – The Robsons agreed that all required improvements to Hwy. 179 would be commenced no later than April 1, 1995 and completed no later than July 1, 1995.
 - Condition No. 6 – The Robsons agreed that earthen berms and screen landscaping would be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994 and October 1, 1994, respectively. A combination of earthen berming, landscaping and rustic fencing was also required in order to satisfy any additional visual screening requirements of all outside display areas as approved by the Director no later than October 1, 1994.
 - Condition No. 8 – The Robsons agreed that all mercury vapor lighting would be eliminated no later than August 1, 1994.
 - Condition No. 9 – The Robsons agreed to install parking lot lighting no later than August 1, 1994. It was agreed that all lighting would be shielded to the satisfaction of the Community Development Department Director no later than August 15, 1994.
 - Condition No. 10 – The Robsons agreed that the south and east sides of the new parking lot area on Tract 41 would be screened with earthen berms and landscaped to the satisfaction of the Director no later than July 1, 1994.

The June 7, 1994 agreement also acknowledged public use of the Son Silver West “newly established parking lot area on the south side of the property [Tract 41] prior to completion of the Hwy. 179 improvements.”¹⁷

14. **On February 22, 1995, John O'Brien, who at the time was an Associate Planner with the City of Sedona, sent a letter to Bill Robson which provided confirmation that all required improvements required under the 1992 CUP for the Son Silver West Property had been completed, with the exception of: (1)**

¹⁶ See Agreement dated June 7, 1994, attached hereto as **Exhibit “12”**.

¹⁷ *Id.* at **Exhibit “12”**.

elimination of the existing mercury vapor lighting [Condition 8], (2) installation of additional parking lot lighting [Condition 9], and (3) construction of the SR 179 improvements [Conditions 4]. Mr. O'Brien requested that the Robsons complete the lighting items as soon as possible and provided notice that the SR 179 improvements would need to be started by April 1, 1995.¹⁸

15. **On May 16, 1995, Associate Planner John O'Brien sent a follow-up letter to Bill Robson providing notice that construction of the required SR 179 improvements was required to have been started no later than April 1, 1995 and was to be completed no later than July 1, 1995.** As of May 16, 1995, it did not appear that the Robsons had commenced construction of the SR 179 improvements. Mr. O'Brien stated that the SR 179 improvements were required to be completed by July 1, 1995 or the Robsons would be in violation of the conditions of the June 7, 1994 agreement and the conditions associated with the CUP.¹⁹

According to email correspondence between City Planning staff on March 15, 2007, it was noted that the SR 179 improvements required under the CUP included grading and paving to improve drainage and safety. Planner Beth Escobar noted that it appeared that the former SR 179 "requirements were just absorbed into the current ADOT improvement project" which included installation of a median and expansion of SR 179.²⁰ Thus, it appears based upon the correspondence from John O'Brien to the Robsons in 1995 and this March 15, 2007 email that all 12 conditions approved pursuant to the CUP were satisfied.

16. **In or about 1995, the City of Sedona adopted a formal Land Development Code ("LDC")** which no longer allowed the expansion of non-conforming uses by obtaining the Planning and Zoning Commission's approval of a conditional use permit.
17. **In 1998, Sedona voters ratified the City Council's action adopting an updated Community Plan, removing the Commercial land use designation on the Son Silver West Property and replacing it with a T-14 Transitional land use designation.**

¹⁸ See February 22, 1995 letter from Associate Planner John O'Brien to Robsons, attached hereto as **Exhibit "13"**.

¹⁹ See May 16, 1995 letter from Associate Planner John O'Brien to Robsons, attached hereto as **Exhibit "14"**.

²⁰ See March 15, 2007 email from Beth Escobar attached hereto as **Exhibit "15"**.

18. **In 2002, Sedona voters ratified the City Council's action adopting an updated Community Plan which removed the Transitional land use designation from the Land Use Plan. The Son Silver West Property was re-designated as Single Family Residential.**
19. **On August 23, 2004 and September 4, 2004, Steve O'Brien of ADOT, the Robsons and Sedona Community Development Director John O'Brien reached an agreement whereby a new driveway connecting the Son Silver West parking lot to Highway 179 would be located and paved on Vacant Tract 40 to accommodate a full median break to serve Son Silver West.²¹** The new driveway and median break would allow circulation of large delivery trucks to the site and would eliminate any backing up of large trucks on SR 179.
20. **Between 2006 and 2012, Community Development Director John O'Brien exercised his authority to interpret and enforce the LDC and the conditional use permit approved for Son Silver West on a periodic and consistent basis.** The exercise of this enforcement authority was apparent in the following correspondence and notices of violation issued by Mr. O'Brien to the Robsons between the years of 2006 through 2012.
 - A. On January 11, 2006, Director John O'Brien issued a Notice of Violation letter to the Robsons suspending CUP 92-3 due to unlawful addition to a storage building, operation of an information booth for an off-site resort, non-compliant screening, and encroachment of commercial activities and parking on Arrow Property and Vacant Tract 40.²²
 - B. On February 24, 2006, Director John O'Brien issued an Amendment to the January 11, 2006 Notice of Violation to the Robsons regarding non-compliant screening along the south property line of Tract 41, demolition work to be performed under demolition permit, the driveway on Vacant Tract 40 being removed and returned to its natural state (despite being agreed upon by ADOT and John in 2004), discontinuing unlawful commercial uses and parking on Vacant Tract 40 and use of the 1,950 s.f. residence.²³

²¹ See ADOT Meeting Notes dated August 23, 2004 and Record of Conversation dated September 8, 2004, attached hereto as **Exhibit "16"**.

²² See January 11, 2006 letter from Director O'Brien attached hereto as **Exhibit "17"**.

²³ See February 24, 2006 letter from Director O'Brien attached hereto as **Exhibit "18"**.

- C. By March of 2006, the Son Silver West Properties were brought into compliance and the CUP was reinstated.²⁴
- D. On May 2, 2008, Director John O'Brien sent a letter to Rio Robson responding to the Robson's proposal to use Vacant Tract 40 as a temporary staging area for the SR 179 construction project and future plans to develop Vacant Tract 40 as a permanent parking lot for Son Silver West customers. Director O'Brien permitted the use of Vacant Tract 40 as a temporary staging area but prohibited the proposed parking expansion. Director O'Brien provided information on the City's Community Plan update process for purposes of the Robsons applying for a Major Community Plan Amendment and rezoning for Vacant Tract 40.²⁵
- E. On May 19, 2011, Director John O'Brien issued a Notice of Violation to Rio Robson regarding the illegal use of Vacant Tract 40 as a parking lot and for outside sales, display and storage of merchandise and equipment associated with the adjacent Son Silver West retail business. The Notice encloses the May 2, 2008 letter in which Mr. O'Brien previously outlined steps that would be necessary to develop the Vacant Tract 40 as permanent parking for Son Silver West (Community Plan Amendment and rezoning). The Notice gave the Robsons until June 24, 2011 to remove all parking on Vacant Tract 40, including all concrete parking stops, and to remove all display items. The Notice states that, should the Robsons fail to remove these items by June 24, 2011, formal code enforcement action would result.²⁶
- F. On May 24, 2011, Director John O'Brien issued a follow-up letter to his Notice of Violation to Rio Robson dated May 19, 2011 regarding the requirement to remove illegal paved parking spaces on Vacant Tract 40. Director O'Brien also recommended that the Robsons become involved in the Community Plan Update process for purposes of redesignating the Son Silver West Property and Vacant Tract 40 for commercial or parking use.²⁷

²⁴ See Email from Planner Beth Escobar dated March 15, 2007 attached hereto as **Exhibit "15"**.

²⁵ See May 2, 2008 letter from Director O'Brien, attached hereto as **Exhibit "19"**.

²⁶ See May 19, 2011 letter from Director O'Brien, attached hereto as **Exhibit "20"**.

²⁷ See May 24, 2011 letter from Director O'Brien attached hereto as **Exhibit "21"**.

- G. On August 31, 2011, Director John O'Brien issued a Notice of Violation and suspension of the CUP to the Robsons listing violations relating to the following unlawful improvements and/or uses: (1) a coffee shop, a shade structure behind the coffee shop, a roof system attached to a rear yard storage building, a fence along the rear property line, a fence along the front property line, and an open-air roof structure that enclosed a vending machine on the Son Silver West Property, (2) commercial parking and storage on the Vacant Lot 40, and (3) commercial parking and storage on the Arrow Property.²⁸
- H. On September 8, 2011, the City of Sedona issued a permit to the Robsons for the existing wrought-iron fence erected within the front yard of the Son Silver West Property abutting Highway 179. The permit/job number assigned to this front fence was B11594. The permit approval form shows a "Zoning Approval Date" of 9/1/2011.²⁹
- I. On September 12, 2011, Director John O'Brien issued a zoning interpretation to the Robsons finding that Robson would not be allowed to modify CUP 92-3 to introduce new uses, such as a coffee shop, or construct new accessory structures because to do so would be a change of a legal nonconforming use inconsistent with the LDC Article 1204.³⁰ The Director advises the Robsons that a Community Plan Amendment and a rezoning to a commercial zoning district would be required in order to operate a coffee shop and construct new accessory structures on the Son Silver West Property.
- J. On September 26, 2011, the Robsons appealed the Director's September 12, 2011 interpretation to the Board of Adjustment.³¹ Within their appeal, the Robsons challenged the determination by Director O'Brien that the construction of the shade roof and gutter behind the coffee shop was an unlawful structure. The Robsons asserted this structure had been in place for 15 years and was permitted along with the building of a work-repair shop. With regard to the rain gutter system and all-weather

²⁸ See August 31, 2011 letter from Director O'Brien attached hereto as **Exhibit "22"**.

²⁹ See Permit Approval and Approved Plans for Son Silver West front wrought-iron fence, attached hereto as **Exhibit "23"**.

³⁰ See September 12, 2011 letter from Director O'Brien to the Robsons attached as **Exhibit "24"**.

³¹ See Robson's appeal narrative to the Board of Adjustment dated September 22, 2011 and City of Sedona Receipt No. 5.015822 dated September 26, 2011 in the amount of \$200 for the Board of Adjustment appeal submitted by the Robsons, attached hereto as **Exhibit "25"**.

clear roofing installed on the west side of the permitted existing building at the southwest corner of Tract 41, the Robsons argued that these improvements were necessary to direct rain water into a gutter system as a precautionary public health and safety measure. The Robsons did not appeal the use of the coffee shop on the Son Silver West Property.

- K. On October 6, 2011, Director John O'Brien sent an email to Rio Robson explaining that an expansion of parking on Vacant Tract 40 and the use of the Arrow Property for office space and employee parking would require a Community Plan amendment and rezoning application.³²
- L. On November 3, 2011, Rio Robson sent an email to Director O'Brien requesting to "defer" the December 2nd appeal hearing before the Board of Adjustment.³³
- M. On November 4, 2011, Director John O'Brien responded to Rio Robsons request to defer the December 2, 2011 appeal to the Board of Adjustment. Director O'Brien stated that he would "hold off on the appeal hearing" and that based upon his site inspection on November 2, 2011, it was apparent that the Robsons had discontinued the coffee shop use. He also stated that he had reviewed all permits that the City had on file and could not find a permit for the roof system and shade structure [described in August 31, 2011 notice of violation]. Director O'Brien stated that he would talk with the Chief Building Inspector and would let the Robsons "know if it will be necessary to reschedule . . . [the] appeal hearing with the Board of Adjustment."³⁴
- N. On December 21, 2011, Community Development Director John O'Brien emailed Rio Robson providing the following enforcement decision with regard to alleged outstanding violations on the Son Silver West Property and the pending appeal before the Board of Adjustment:³⁵

I have been giving your building permit situation at Son Silver West some thought lately and how we might proceed. Rather than get into some long drawn out enforcement action based on what you might have or might not have constructed at Son

³² See October 6, 2011 email from Director O'Brien attached hereto as **Exhibit "26"**.

³³ See November 3, 2011 email from Rio Robson to Director O'Brien attached hereto as **Exhibit "27"**.

³⁴ See November 4, 2011 email from Director O'Brien attached hereto as **Exhibit "27"**.

³⁵ See December 21, 2011 decision by Director O'Brien attached hereto as **Exhibit "28"**.

Silver West over the years, here is how I would like to proceed:

1. You have already shut down the coffee shop and this was my primary concern. I appreciate you taking care of this issue.
2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building. You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.
3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.
4. By March 1, 2012, I am requesting that your provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

I feel this is a fair compromise to resolve this situation. Please let me know your thoughts.

Thanks.

John O' Brien, Director
Community Development Department

21. **On or about May 9, 2012, Director John O'Brien sent by email to several staff members and provided to future Director Audree Juhlin a memorandum titled "Project Status Information May 2012."**³⁶ Within the memorandum, Director O'Brien provided updates and information on a number of projects throughout the City of Sedona, including Son Silver West. Notably, Director O'Brien provided no information to staff or Ms. Juhlin regarding any current violations on the Son Silver West Property or current violations relating to the 1992 CUP. Instead, Director O'Brien memorialized his prior December 21, 2011 decision by stating:

Rio Robson is supposed to get us a notebook of photographs of the property showing all of the existing improvements. He needs to date these photos and provide them to staff so we know exactly what they have now in place and what is legal non-conforming ... so the next time they building [sic] without permits, we will know what is legal and what is illegal. I have asked for this for several months and Rio has said "he will get to it soon" for at least four months.

22. **In accordance with Director O'Brien's decision dated December 21, 2011, Rio Robson submitted to the City of Sedona a conceptual site plan and labeled photographs** of the existing uses, structures and parking area on the Son Silver West Property, including the Father Kino Chapel on the Arrow Property.³⁷ The photographs submitted by Mr. Robson are labeled and dated March 1, 2012.
23. **On July 3, 2012, Director John O'Brien retired** after being employed by the City of Sedona for 24 years.
24. **As a result and in reliance on the December 21, 2011 decision by Director John O'Brien finding no use or structural violations of the LDC and 1992 CUP existing on the Son Silver West Property, the Robsons undertook the following actions and substantial investments in their Son Silver West business:**
- A. The Robsons increased their off-site warehousing and art inventory space from approximately 2,000 s.f. to 8,500 s.f. in order to maintain a constant supply of art objects and goods to the Son Silver West Property for sale. The Robsons are currently in the process of expanding their total warehousing space to approximately 14,000 s.f.

³⁶ See May 9, 2012 email from Director O'Brien and redacted memorandum titled "Project Status Information May 2012" attached hereto as **Exhibit "29"**.

³⁷ See conceptual site plan and photographs dated March 1, 2012, attached hereto as **Exhibit "30"**.

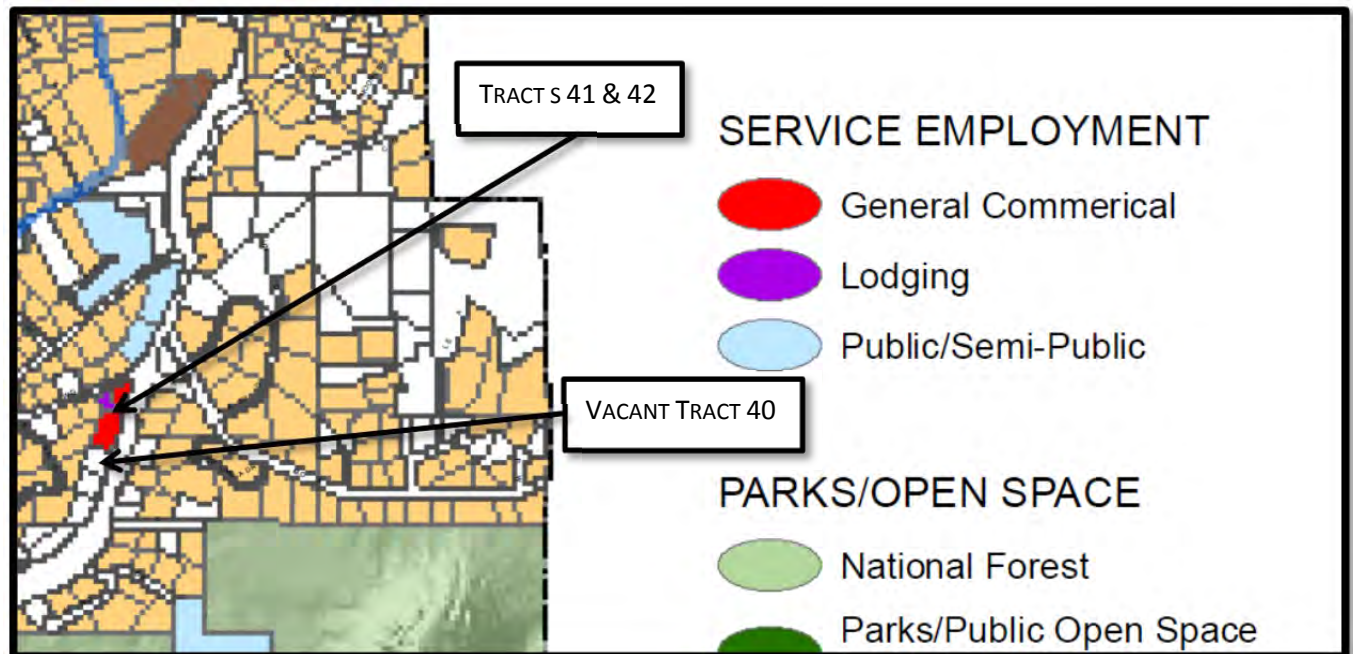
- B. The Robsons expanded their sources and increased their wholesale purchases of art objects and related inventory items for the Son Silver West Property. The assurance supplied by Director O'Brien's decision that the Son Silver West Property was operating with no violations of the LDC or 1992 CUP caused the Robsons to purchase larger volumes of retail inventory to be stored in the expanded warehouse space and transferred to the Son Silver West Property for sale. For instance, the Robsons purchased approximately \$300,000 worth of art inventory from Mexico in 2013 and an additional \$500,000 of inventory in 2014.
- C. The Robsons purchased new art manufacturing equipment totaling approximately \$45,000 and spent approximately \$100,000 on computer software and telecommunication equipment for the Son Silver West Property.
- D. As a result of these actions taken by the Robsons in reliance on the December 21, 2011 decision by Director O'Brien, the Robsons realized noticeable increases in annual net revenue starting in 2012 through this year to date.

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25. **On March 11, 2014, an updated Sedona Community Plan adopted by the City Council was ratified by voters.** As suggested by John O'Brien, Rio Robson played an active role in the Community Plan Update process in 2013 and 2014, including the formation of a Community Focus Area (CFA) for the area along SR 179 surrounding the Son Silver West Property.

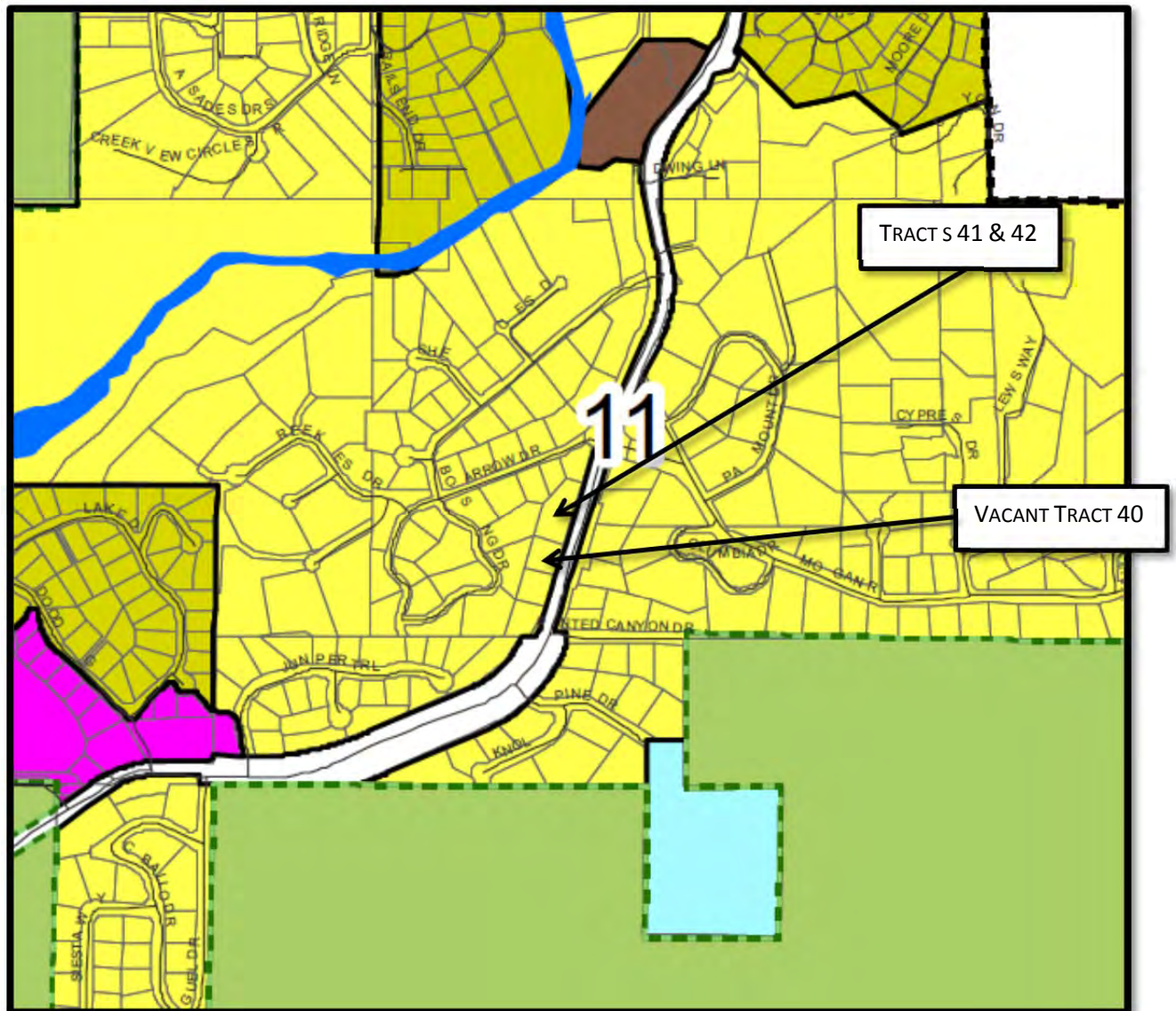
The current 2014 Community Plan designates the Son Silver West Property (Tracts 42 and 41) as General Commercial (red color) on the Existing Land Use Map. Vacant Tract 40 is designated as Vacant Land (white color).

EXISTING LAND USE MAP RATIFIED BY VOTERS ON MARCH 11, 2014



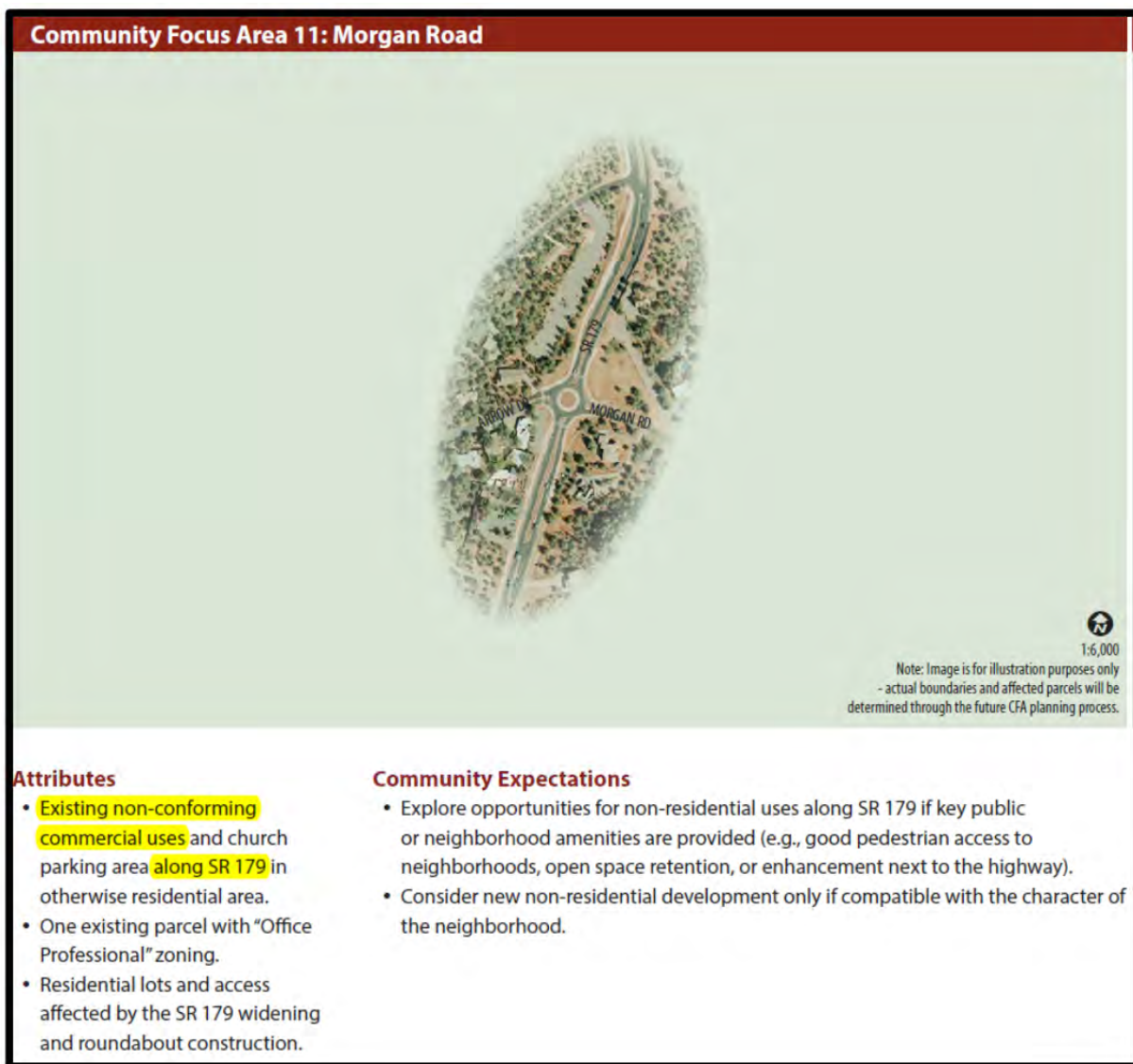
Incredibly, the commercial retail uses existing on Tract 42 since 1960 and expanded on Tract 41 under the 1992 CUP were not identified on the Future Land Use Map with a Commercial land use designation. Instead, the Son Silver West Property and Vacant Tract 40 are designated as Single Family Low Density (0.5 to 2 DU/AC) (yellow color). The number "11" designates the area along SR 179, including the Son Silver West Property and Vacant Tract 40, as being within Morgan Road Community Focus Area 11.

FUTURE LAND USE MAP RATIFIED BY VOTERS ON MARCH 11, 2014



The Land Use Element of the 2014 Community Plan describes the Morgan Road CFA as possessing attributes including commercial non-conforming uses along SR 179, such as Son Silver West, and identifies

community expectations for non-residential uses along SR 179. According to page 34 of the Land Use Element, the Morgan Road CFA is a location where the City will develop a Specific Plan, including any necessary rezoning, for adoption by the City Council. The Specific Plans will be developed with participation from property owners, neighbors, and stakeholders and will strive to achieve the “Community Expectations” for each CFA. According to the Land Use Action Plan on page 55 of the Land Use Element, creation and implementation of a Specific Plan for the Morgan Road CFA will occur approximately 6 to 10 years from now.



26. On October 8, 2014, Director Audree Juhlin issued a Notice of Violation letter to the Robsons for an unlawful expansion of a legal non-conforming use onto three nearby single-family residential properties zoned RS-18b: (1) the Vacant Tract 40, (2) the Arrow Property, and (3) the Bowstring Property. The Notice required the immediate cessation of all commercial activities at these 3 residentially zoned properties and provided an option for the Robsons to apply for approval of a Major Community Plan amendment and rezoning for general commercial uses. The October 8, 2014 Notice did not allege any violations on the Son Silver West Property.³⁸ At the time, 33 months had expired since Director O'Brien's December 21, 2011 enforcement ruling.
27. On May 28, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a Major Community Plan Amendment application to the City of Sedona requesting that the Future Land Use Plan be amended to show a Planned Area designation for the Son Silver West Property, Vacant Tract 40 and the Arrow Property.
28. On June 26, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a rezoning application to the City of Sedona requesting that the Son Silver West Property, Vacant Tract 40 and the Arrow Property be rezoned from the RS-18b district to the Planned Development district for purposes of: (1) converting a legal non-conforming use on the Son Silver West Property to a legal conforming use, (2) develop additional parking on the Vacant Tract 40 along SR 179, (3) allow use of the Arrow Property as offices relating to Son Silver West's business, and (4) allow a coffee and smoothie bar on the Son Silver West Property.
29. On July 24, 2015, Attorney Brian Furuya of Aspey, Watkins & Diesel, PLLC, on behalf of the Robsons, submitted a revised Major Community Plan Amendment and rezoning application pertaining to the Son Silver West Property and Vacant Tract 40 only. The revised Major Community Plan Amendment application requested a change in the land use designation for these 2 parcels from Single Family Low Density to Planned Area. The revised rezoning application requested that the 2 parcels be rezoned from the RS-18b district to the Planned Area district and requested approval to develop a new parking lot on the Vacant Tract 40.
30. On August 12, 2015, Attorney Brian Furuya, on behalf of the Robsons, submitted a request to withdraw the Major Community Plan Amendment and rezoning applications pending under Case No. PZ15-00004.

³⁸ See October 8, 2014 letter from Director Audree Juhlin attached hereto as **Exhibit "31"**.

31. On September 8, 2015, Attorneys Francis J. Slavin and Heather Dukes and the Robsons (Rio Robson in person and Bill and Linda Rose Robson by telephone from Wyoming) met with City of Sedona Community Development Director Audree Juhlin, City Manager Justin Clifton and City Attorney Robert Pickels to discuss an "expanded list" of alleged violations of the 1992 CUP and/or Sedona Land Development Code applicable to the Son Silver West Property, Vacant Tract 40, the Arrow Property and the Bowstring Property. Many of the alleged violations discussed during this meeting were items that either were in existence in 1988 or were previously approved by: (1) the Planning Commission pursuant to Case No. CUP 92-3, (2) former Community Development Director Tom Schafer with regard to the 1993 Plan approval and building permits issued thereunder, and (3) former Community Development Director John O'Brien's written interpretation and final enforcement decision dated December 21, 2011. During this meeting, Mr. Slavin offered to provide a legal memorandum to the City of Sedona representatives in attendance at that meeting.

II. VESTED RIGHTS OF SON SILVER WEST

The owners of Son Silver West enjoy vested rights with regard to: (1) the legal nonconforming use of the Son Silver West Property, (2) all legal non-conforming structures and outside retail display areas in existence on Tract 42 at the time of the CUP approval in 1992, (3) the construction of the southernmost building on Tract 41, (4) the current parking configuration on Tract 41, and (5) the existing outdoor retail space along the frontage of Tract 42 as well as the approximate 30-foot area along the north property line of Tract 41. The Robsons enjoy vested rights with regard to Item Nos. 1 and 2 as a result of the legal nonconforming use rights resulting from Sedona's incorporation in 1988 and the City Planning Commission's approval of the 1992 CUP. The uses and structures identified in Item Nos. 3, 4 and 5 are vested as a result of: (1) the September 29, 1993 Decision by Director Tom Schafer approving the Son Silver West site plan and parking plan (the "**1993 Plan**") as being in general conformance with the 1992 CUP, (2) the City's issuance of building permits related thereto, and (iii) the Robson's good faith reliance thereon as demonstrated by their substantial work and incurrence of substantial expenditures to complete the construction of those improvements.

The Arizona common law provides for delayed vesting of development rights. As a general rule, this involves the issuance by the municipality of a building permit or project-specific development approval and the good faith reliance thereon by the developer in the form of substantial work, incurrence of substantial expenditures and/or incurrence of substantial liability. Once a building permit is issued as duly authorized by law and the permittee has materially acted in reliance thereon, the right to continue under those rules is vested and municipality may not arbitrarily revoke or change the rules under which the permit was issued. *Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz.App. 600, 607, 557 P.2d 532 (App.1976). This common law rule is based upon the theory of equitable estoppel.

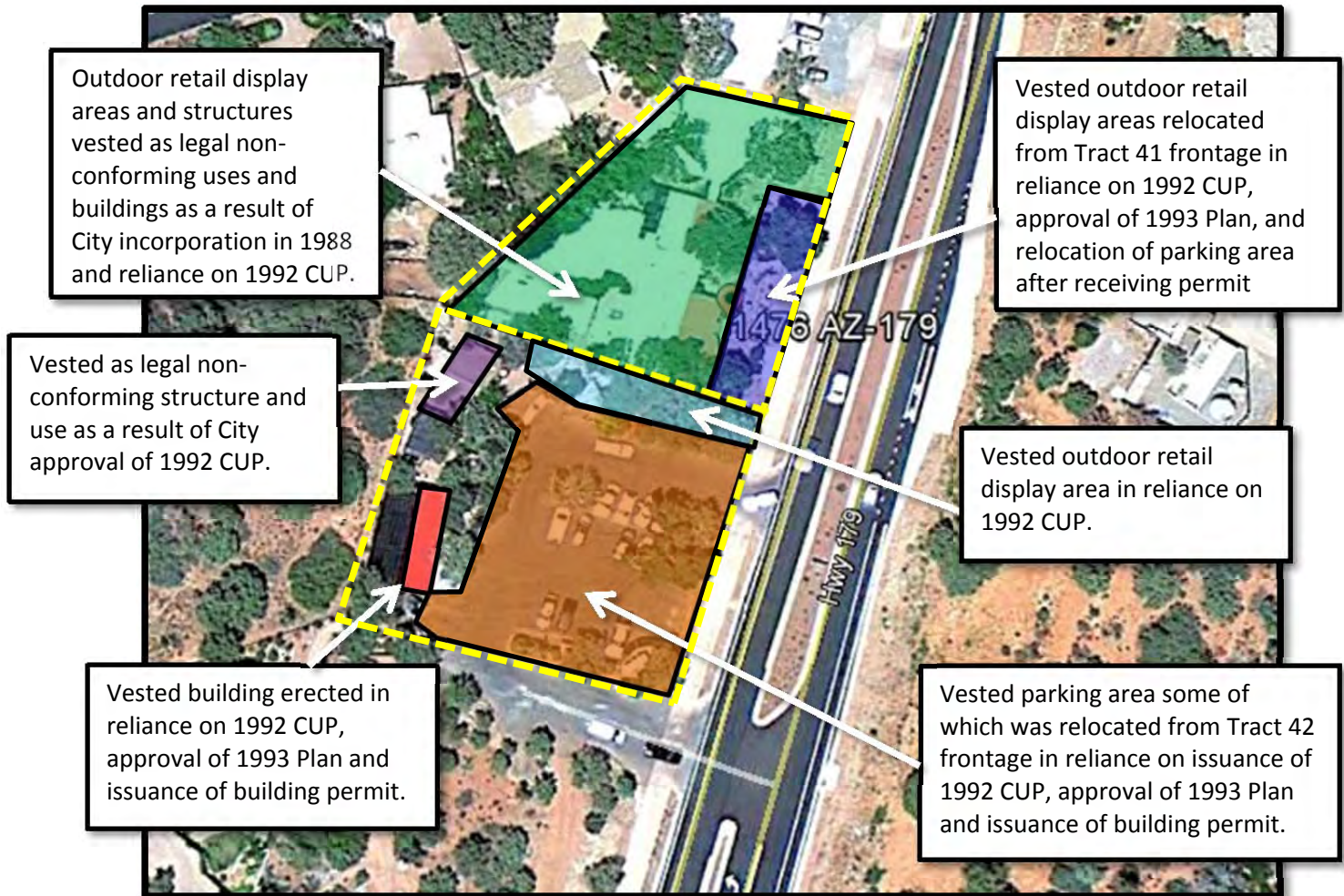
In the legal nonconforming use context, "a nonconforming land use is a vested property right and is 'defined as a lawful use maintained after the effective date of a zoning ordinance prohibiting such use.'" *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 182, 181 P.3d 219, 229 (App.2008). In this case, the Robsons, as owners of the Son Silver West Property and its legal non-conforming use, enjoy a vested right to preserve and maintain the development that occurred on the Son Silver West Property prior to the incorporation of the City of Sedona in 1988 and as a result of the 1992 CUP approval, the 1993 Plan approval and building permits issued by the City in accordance with development regulations applicable to the property in existence on the effective date that vesting occurred. At the time of the 1992 CUP approval and the 1993 Plan and building permit approvals, the original Sedona Community Plan identified the Son Silver West Property with a General Commercial land use designation. Inasmuch as the 1992 CUP and permit approvals allowed the expansion of a commercial retail use in conformance with City's Community Plan at that time, the Robsons were justified in placing good faith reliance on these approvals.

As generally depicted on the aerial photograph below and the 1993 Plan attached hereto as **Exhibit 11**, the Robsons relocated and built a new surface parking lot area on Tract 41, constructed the southernmost building on Tract 41 and relocated some of the existing outdoor retail display area along the frontage of Tract 41 and along the north 60 feet of Tract 41 to the former parking lot area on Tract 42, all while justifiably relying on the: 1) 1993 Plan approved by former Community Development Director Tom Schafer and 2) building permits issued for the southernmost building and the new parking area on Tract 41. Inasmuch as these substantial expenditures and improvements were made by the Robsons in good faith reliance on the City's approvals and permits issued, the Robsons possess vested property rights in the location and square footage of the buildings, parking area and outdoor retail display areas existing at the time of the City's incorporation in 1988 and as shown on the 1993 Plan.

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VESTED RIGHTS OF SON SILVER WEST
JUNE 2011 GOOGLE PHOTOGRAPH OF SON SILVER WEST PROPERTY DEMONSTRATING
IMPROVEMENTS AND AREAS CONSTRUCTED IN RELIANCE ON 1993 PLAN AND PERMITS

*With annotations supplied by Francis J. Slavin, P.C.



III. DIRECTOR JOHN O'BRIEN'S DECISION WAS AN EXERCISE OF THE DIRECTOR'S INTERPRETATION AND ENFORCEMENT AUTHORITY AS DELEGATED BY STATE ZONING ENABLING STATUTES AND THE SEDONA LAND DEVELOPMENT CODE

Municipalities have been authorized by the state legislature to engage in planning and zoning activities, including interpretation and enforcement of their zoning ordinances. Municipalities have no inherent policy power, and, therefore, their power to regulate zoning must exist by virtue of delegated power. *Bella Vista Ranches, Inc. v. City of Sierra Vista*, 126 Ariz. 142, 143, 613 P.2d 302, 303 (App.1980). As a result, the state's delegation of zoning powers to local authorities requires that local zoning ordinances comply and be consistent with the state enabling act - Ariz. R. Stat. § 9-462, et al. As demonstrated below, the Sedona Land Development Code ("LDC") complies and is

consistent with the definition of zoning administrator and the zoning administrator's enforcement role created by Ariz. R. Stat. §§ 9-462(A)(4) and 9-462.05(C) and (D). By acting in his official capacity to interpret and enforce the Sedona LDC and the 1992 CUP approval, Director John O'Brien was authorized to render his December 21, 2011 decision regarding the allowable uses and structures existing on the Son Silver West Property.

A. Sedona Community Development Director's Interpretation and Enforcement Authority

1. Powers and Authority Delegated to Zoning Administrator under Ariz. R. Stat. § 9-462, *et seq.*

The role and responsibility of a municipal "zoning administrator" is broadly defined in Ariz. R. Stat. § 9-462(A)(4) as "the official responsible for enforcement of the zoning ordinance." Within the "Enforcement" requirements prescribed under Ariz. R. Stat. § 9-462.05, subsection C and D require a municipal legislative body to establish the office of zoning administrator and charges the zoning administrator with the responsibility of enforcing the zoning ordinance.

Ariz. R. Stat. § 9-462.05 – Enforcement.

...

- C. By ordinance, the legislative body shall establish the office of zoning administrator. The zoning administrator is charged with responsibility for enforcement of the zoning ordinance.
- D. By ordinance, the legislative body shall establish all necessary and appropriate rules and procedures governing application for zoning amendment, review and approval of plans, issuance of any necessary permits or compliance certificates, inspection of buildings, structures and lands and any other actions which may be considered necessary or desirable for enforcement of the zoning ordinance.

Emphasis added. As demonstrated by the language of Ariz. R. Stat. § 9-462.05, the state legislature has charged zoning administrators with unfettered responsibility to enforce a zoning ordinance. Section 9-462.05(D) enables the municipal legislative body to establish the rules and procedures for use by the zoning administrator to enforce the zoning ordinance.

2. Zoning Administrator Powers and Authority Delegated to Community Development Director under Sedona Land Development Code

The Sedona City Council has adopted a Land Development Code which establishes the office of Community Development Director and invests the Director with the statutory duties of the zoning administrator. The position of "Director" is defined in Section 201 of the LDC, in part, as "the Zoning Administrator for the city." The term "Zoning Administrator" is defined in the LDC as the "Director of the Department of Community Development." Section 306 of the Sedona Land Development Code also provides as follows:

306 Director of Community Development.³⁹

- A. The Director of Community Development is appointed by, reports to and serves at the pleasure of the City Manager.
- B. The Director of Community Development is the head of the Department of Community Development, in accordance with A.R.S. Section 9-461.03 (as may be amended). His duties involving planning, zoning and building, and as Zoning Administrator pursuant to A.R.S. Section 9-462.05 (as may be amended), include:
 - 1. Reviewing building plans, comparing plans with ordinances, codes, specifications and regulations, and directing and enforcing compliance;

B. Director John O' Brien's Inspections, Correspondence and Decisions Issued to Son Silver West are Consistent with His Enforcement Powers as Zoning Administrator

Beginning in approximately 1995 through his retirement in July 2012, John O'Brien consistently and periodically exercised his power to enforce the provisions of the Sedona LDC and the 1992 CUP issued to the Son Silver West Property. As described in greater detail in the Statement of Facts set forth above, Mr. O'Brien took the following actions with regard to Son Silver West leading up to his December 21, 2011 decision:

As an Associate Planner at the City, in 1995, Mr. O'Brien sent letters to the Robsons enforcing both the conditions of approval for CUP 92-3 and the requisite time periods for completion of those conditions.⁴⁰

³⁹ Sedona Land Development Code current through Ordinance 2015-02, passed February 10, 2015.

Then, on January 11, 2006 and February 24, 2006, Mr. O'Brien, as the Director of the Community Development Department, issued to the Robsons a notice of violation and an amended notice of violation, respectively.⁴¹ Within these notices, Director O'Brien provided notice to the Robsons that their CUP was suspended until the listed violations were either corrected or discontinued. By March of 2006, the Son Silver West Properties were brought into compliance and the CUP was reinstated.⁴²

On May 2, 2008, Director O'Brien sent a letter to Rio Robson interpreting the Sedona LDC to allow the temporary use of Vacant Tract 40 as a staging area for the SR 179 construction project. In response to the Robson's inquiry regarding development of Vacant Tract 40 as a permanent parking lot for Son Silver West customers, Director O'Brien enforced the LDC prohibiting such use unless the Robsons applied for and obtained City Council approval of a Community Plan amendment and rezoning for Vacant Tract 40.⁴³

Approximately 3 years later, on May 19 and May 24, 2011, Director O'Brien exercised his enforcement authority by issuing a notice of violation and follow-up letter to Rio Robson requiring removal of all parking and outdoor display and storage uses being conducted on Vacant Lot 40 in violation of the LDC.⁴⁴ These May 2011 letters were followed by a subsequent notice of violation and suspension of the CUP dated August 31, 2011. The August 31, 2011 notice was issued by Director O'Brien for an unlawful coffee shop use and the alleged unlawful erection of: (1) a shade structure behind the coffee shop, (2) a roof system attached to a rear yard storage building, (3) an open-air roof system enclosing a vending machine, and (4) a fence along the front property line of the Son Silver West Property. The August 31, 2011 notice also cited parking and storage violations on Vacant Tract 40 and the Arrow Property.⁴⁵ Since neither Vacant Tract 40 nor the Arrow Property fall under the CUP, technically an alleged zoning violation pertaining to these properties would only be enforceable under the LDC.

⁴⁰ See Letter from John O'Brien to Robsons dated February 22, 1995 attached hereto as **Exhibit "13"** ; See also Letter from John O'Brien to Robsons dated May 16, 1995 attached hereto as **Exhibit "14"**.

⁴¹ See Letters from John O'Brien to Robsons dated January 11, 2006 and February 24, 2006 attached hereto as **Exhibits 17" and "18"**, respectively.

⁴² See Email from Planner Beth Escobar to City staff dated March 15, 2007 attached hereto as **Exhibit "15"**.

⁴³ See Letter from John O'Brien to Rio Robson dated May 2, 2008 attached hereto as **Exhibit "19"**.

⁴⁴ See Letters from Director O'Brien dated May 19, 2011 and May 24, 2011 attached hereto as **Exhibit "20" and "21"** respectively.

⁴⁵ See Letter from Director O'Brien dated August 31, 2011 attached hereto as **Exhibit "22"**.

On September 12, 2011, Director O'Brien issued to the Robsons a formal interpretation of the LDC finding that the Robson's would not be allowed to modify their CUP to introduce new uses, such as a coffee shop, or to construct new accessory structures on the Son Silver West Property because to do so would constitute a change to a legal non-conforming use inconsistent with LDC Article 1204. Director O'Brien advised the Robsons to apply for City Council approval of a Community Plan amendment and rezoning in order to operate a coffee shop or erect new structures on the Son Silver West Property.⁴⁶ On September 26, 2011, this interpretation was appealed by the Robsons to the Board of Adjustment challenging the Director's decision that new structures had been erected.⁴⁷

On October 6, 2011, Director O'Brien sent a separate interpretation letter to the Robsons finding that an expansion of parking on Vacant Tract 40 and the use of the Arrow Property for office space and employee parking would require a Community Plan amendment and rezoning application.⁴⁸

On November 3, 2011, Rio Robson emailed a request to John O'Brien to defer the Board of Adjustment hearing.⁴⁹ After receiving the Robson's November 3, 2011 email request, Director O'Brien sent an email response on November 4, 2011 stating that he would "hold off on the appeal hearing" and would notify the Robsons, after meeting with Sedona's Chief Building Inspector, whether it would be necessary to reschedule the appeal hearing before the Board. Director O'Brien also confirmed that he made a site inspection of the Son Silver West Property on November 2, 2011 and verified that the coffee shop use had been discontinued.⁵⁰

On December 21, 2011, Director O'Brien sent an email to Rio Robson providing his final decision regarding the enforcement proceedings that had commenced on August 31, 2011 as well as the September 12, 2011 formal interpretation that was appealed by the Robsons to the Board of Adjustment.⁵¹ In his decision, Director O'Brien acknowledged the discontinuance of the coffee shop use. He also expressed his inability to locate City or County building permits or approvals for the shade structure and roof system which the Robsons claimed were replacements of similar structures. Due to the lack of documentation and the possibility that these structures could have been

⁴⁶ See Letter from Director O'Brien dated September 12, 2011 attached hereto as **Exhibit "24"**.

⁴⁷ See September 26, 2011 appeal from Robsons to Board of Adjustment attached hereto as **Exhibit "25"**.

⁴⁸ See email from Director O'Brien dated October 6, 2011 attached hereto as **Exhibit "26"**.

⁴⁹ See email from Rio Robson to Director O'Brien dated November 3, 2011 attached hereto as **Exhibit "27"**.

⁵⁰ See email from Director O'Brien dated November 4, 2011 attached hereto as **Exhibit "27"**.

⁵¹ See Director O'Brien's December 21, 2011 decision attached hereto as **Exhibit "28"**.

constructed before Sedona's incorporation in 1988, Director O'Brien made the decision to allow the structures to remain as constructed. After requiring that the Robsons submit a site plan and photographs of the Son Silver West Property showing existing buildings, their use and parking, Director O'Brien made the following enforcement decision:

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

When analyzing the language used by Director O'Brien in his December 21, 2011 enforcement ruling in the context of the preceding history of enforcement decisions as well as the Robson's appeal pending before the Board of Adjustment, it is clear that Director O'Brien's decision was an authorized act of enforcement by Sedona's Zoning Administrator under Ariz. R. Stat. § 9-462.05 and Section 306 of the Sedona LDC.

Prior to retiring, in May of 2012, Director O'Brien sent an email to several staff members and provided to future Director Audree Juhlin a memorandum titled "Project Status Information May 2012."⁵² Within the memorandum, Director O'Brien provided an update and information regarding Son Silver West. Notably, Director O'Brien provided no information to staff or Ms. Juhlin regarding any current violations on the Son Silver West Property or current violations relating to the 1992 CUP. Instead, Director O'Brien memorialized his prior December 21, 2011 decision by stating:

Rio Robson is supposed to get us a notebook of photographs of the property showing all of the existing improvements. He needs to date these photos and provide them to staff so we know exactly what they have now in place and what is legal non-conforming ... so the next time they building [sic] without permits, we will know what is legal and what is illegal. I have asked for this for several months and Rio has said "he will get to it soon" for at least four months.

It is important to note that, after the Robsons submitted a conceptual site plan and photographs of the Son Silver West Property to Director O'Brien, no Board of Adjustment hearing was scheduled by the City of Sedona. Since there was no evidence available to Director O'Brien to present to the Board of Adjustment with regard to the alleged new structures, Mr. O'Brien never rescheduled the Board of Adjustment hearing.

⁵² See May 9, 2012 email from Director O'Brien and redacted memorandum titled "Project Status Information May 2012" attached hereto as **Exhibit "29"**.

C. Director John O'Brien's December 21, 2011 Decision was Not Ultra Vires

An ultra vires act is one that is "unauthorized" or "beyond the scope of power allowed or granted by a corporate charter or by law." Black's Law Dictionary (10th ed. 2014). With regard to a municipality, the exercise of zoning power must be founded on the state legislature's delegation to local governmental units, and "in the absence of such a grant, such exercise is ultra vires and void." *Bella Vista Ranches, Inc. v. City of Sierra Vista*, 126 Ariz. 142, 144, 613 P.2d 302, 304 (App.1980). "The doctrine of ultra vires, when invoked, should not be allowed where it would not advance justice, but, on the contrary, would accomplish a legal wrong." *Higgins v. Arizona Sav and Loan Ass'n*, 85 Ariz. 6, 10, 330 P.2d 504, 507 (1958) (citing *Leon v. Citizen's Building & Loan Ass'n*, 14 Ariz. 294, 127 P. 721, 722 (1912)). Furthermore, public officials are "presumed to have done their duty" and their acts "are presumed to be correct and legal in absence of clear and convincing evidence to the contrary." Emphasis added. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 193, 181 P.3d 219, 240 (App.2008) (citing *Verdugo v. Indus. Comm'n*, 108 Ariz. 44, 48, 492 P.2d 705, 709 (1972)).

In *Bella Vista Ranches, Inc. v. City of Sierra Vista*, 126 Ariz. at 143, 613 P.2d at 303, the Arizona Court of Appeals determined that Sierra Vista had no authority to regulate subdivisions prior to the passage of Ariz. R. Stat. §§ 9-463 and 9-463.04. An owner of real property in Sierra Vista challenged the City's enforcement of its subdivision regulations which were adopted in 1966 – prior to the state legislature's passage of the first subdivision enabling statutes, Ariz. R. Stat. 9-463 and 9-463.04, in 1974. *Id.* The Court of Appeals found that, because the legislature had delegated no comprehensive regulatory authority to cities and towns over subdividing at the time Sierra Vista adopted its subdivision regulations, Sierra Vista's exercise of the zoning power to require approval of subdivision plats was ultra vires and void. *Id.* at 143-144, 613 P.2d at 303-304.

Contrary to Sierra Vista's attempt to regulate subdivisions within its territorial limits without being delegated this statutory authority in *Bella Vista Ranches, Inc. v. City of Sierra Vista*, Director O'Brien's December 21, 2011 enforcement ruling was an authorized enforcement act under Ariz. R. Stat. § 9-462.05 and Section 306 of the Sedona LDC. Ariz. R. Stat. § 9-462.05 charges the zoning administrator with the responsibility of enforcing the zoning ordinance - a responsibility that is delegated to the Community Development Director under the Sedona LDC. The City of Sedona may not limit or qualify such authorization in an attempt to vacate an enforcement decision by the Director. As shown above, the December 21, 2011 decision was the culmination of the Director's prior interpretation and enforcement decisions issued to the Robsons starting in 2006 through 2011, and was a final decision obviating the need to reschedule a Board of Adjustment hearing for purposes of deciding the Robson's pending appeal of the Director's September 12, 2011 interpretation. In addition, the fact that O'Brien intended that his decision serve as a baseline for future review of potential expanded uses and structures on the Son Silver West Property also supports a finding that the decision was final and enforceable.

Furthermore, the City's failure to take any action to challenge Director O'Brien's decision for almost 4 years from December 21, 2011 until September 2015 is persuasive that the City considered Director O'Brien's decision to be a final, valid decision. When current Director Audree Juhlin issued a notice of violation to the Robsons on October 8, 2014, the notice alleged no violations pertaining to the use or existing structures on the Son Silver West Property which is consistent with Director O'Brien's December 21, 2011 decision.⁵³ Instead, the October 8, 2014 notice alleged violations on the Vacant Tract 40, Arrow Property and Bowstring Property. It was not until after the Robsons withdrew their Major Community Plan and rezoning applications that the City began revisiting violations that had been resolved by Director O'Brien's prior enforcement decision. Thus, it appears that, in the 45 months preceding our September 8, 2015 meeting, the City was continuing to uphold and enforce the December 21, 2011 decision by Director O'Brien as an authorized act of the Sedona Community Development Director. To disregard that enforcement decision upon which the Robsons have relied for 45 months as ultra vires, "would not advance justice, but, on the contrary, would accomplish a legal wrong." See *Higgins*, supra. Moreover, the City of Sedona cannot provide clear and convincing evidence that would overcome the presumption that John O'Brien performed his enforcement duties as the Director of Community Development when issuing his December 21, 2011 decision and that such decision was correct and legal.

IV. DIRECTOR JOHN O'BRIEN'S DECISION MAY NOT BE CHALLENGED BY AGGRIEVED PERSONS AS A RESULT OF THEIR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

Director John O'Brien's December 21, 2011 decision was not appealed by an aggrieved person to the Board of Adjustment within 15 days, as required by Sedona LDC § 404.10(A). Therefore, in the event an aggrieved person were to attempt to challenge Director O'Brien's decision in Superior Court in the future, the Superior Court would lack jurisdiction to hear and decide the appeal due to the person's failure to exhaust administrative remedies.

In *Southwest Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 36 P.3d 1208 (App. 2001), the Arizona Court of Appeals determined that a soil remediation company was required to exhaust its administrative remedies by appealing a decision of the City of Tucson zoning administrator to the Board of Adjustment before bringing suit in superior court. The Court of Appeals in *Southwest Soil Remediation, Inc.* provided the following detailed summary of Arizona caselaw regarding requirements to exhaust administrative remedies and the declination of courts to exercise jurisdiction when parties or aggrieved persons fail to utilize available administrative remedies:

A party must exhaust available administrative remedies "before appealing to the courts." *Minor v. Cochise County*, 125 Ariz. 170, 172, 608 P.2d 309, 311 (1980). Two closely allied doctrines are applied in such cases.

⁵³ See Notice of Violation dated October 8, 2014 attached hereto as **Exhibit "31"**.

See *Original Apartment Movers, Inc. v. Waddell*, 179 Ariz. 419, 420, 880 P.2d 639, 640 (App.1993). The doctrine of exhaustion of administrative remedies usually applies when a statute establishes an administrative review procedure and “determines when judicial review is available.” *Id.* (emphasis in original); see also *Minor*, 125 Ariz. at 172, 608 P.2d at 311. “Where a board is specifically empowered to act by the Legislature, the board should act before recourse is had to the courts” as judicial review “is withheld until the administrative process has run its course.” *Minor*, 125 Ariz. at 172, 608 P.2d at 311.

The primary jurisdiction doctrine, on the other hand, “determines who should initially determine a case.” *Original Apartment Movers*, 179 Ariz. at 420, 880 P.2d at 641 (emphasis in original). If a case raises “ ‘issues of fact not within the conventional experience of judges [...] ... agencies created by [the legislature] for regulating the subject matter should not be passed over,’ ” because administrative agencies exercise expertise and are more experienced in specialized areas. *Campbell v. Mountain States Tel. & Tel. Co.*, 120 Ariz. 426, 430, 586 P.2d 987, 991 (App.1978), quoting *Far East Conference v. United States*, 342 U.S. 570, 574, 72 S.Ct. 492, 494, 96 L.Ed. 576, 582 (1952); see also II Kenneth Culp Davis and Richard J. Pierce, Jr., *Administrative Law Treatise* § 14.1, at 272 (3d ed.1994).

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Both doctrines require a party to pursue available administrative remedies. See *Hamilton v. State*, 186 Ariz. 590, 593, 925 P.2d 731, 734 (App.1996); *Original Apartment Movers*. If a party fails to utilize the available administrative remedies, the courts decline to exercise jurisdiction.² See *Minor*, 125 Ariz. at 172, 608 P.2d at 311.

After describing the doctrine of exhaustion of administrative remedies and the primary jurisdiction doctrine, the Court of Appeals turned its attention to the language of Ariz. R. Stat. § 9-462.06(G)(1) which directs a board of adjustment to “[h]ear and decide all appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance.” *Id.* at 442, 36 P.3d at 1212. The Court also noted that Ariz. R. Stat. § 9-462.06(K) provides that a person aggrieved by a board of adjustment decision may file a special action complaint in superior court within 30 days of the board’s decision. *Id.* Based upon these statutes, the Court of Appeals held that the soil remediation company was required to follow the statutory administrative procedure in order to exhaust its administrative remedies and that the board has specialized expertise, which makes it the appropriate forum to exercise primary jurisdiction. *Id.* As a result of the soil remediation company’s failure to appeal to the Board of Adjustment, the Court of Appeals held that the trial court properly declined to exercise jurisdiction over the matter. *Id.*

In accordance with the statutes analyzed by the Court of Appeals in *Southwest Soil Remediation, Inc.*, Ariz. R. Stat. §§ 9-462.06(G)(1) and (K), the City of Sedona has adopted Sections 304.01(B) and 404.10 of the Sedona LDC which directs the City's Board of Adjustment to hear and decide appeals of decisions issued by the Community Development Director. Pursuant to LDC Section 404.10, the decision of the Director must be appealed by any person aggrieved by the decision within 15 days of the date of the Director's decision. Section 404.10 also requires that notice of the Board of Adjustment hearing meet the notice requirements set forth in Section 404.04, including publishing notice in a newspaper of general circulation, posting a notice on the property and providing notice by First Class U.S. Mail to all property owners within 300 feet of the subject property. Upon receiving an adverse decision from the Board of Adjustment, LDC Section 404.10 provides that an aggrieved person may file an appeal with the superior court within 30 days of the Board of Adjustment decision, as prescribed in Ariz. R. Stat. § 9-462.06.

No appeal was filed by anyone following the December 21, 2011 decision of Director John O'Brien regarding the enforcement of the LDC and 1992 CUP. Aggrieved persons would be deemed to have had constructive notice of Director John O'Brien's decision because it was issued in response to a pending Board of Adjustment appeal filed by the Robsons and scheduled for a hearing on December 2, 2011. The pending Board of Adjustment appeal would have been publicly noticed in accordance with Sections 404.04 and 404.10 of the LDC. Therefore, based upon the holding in *Southwest Remediation Soil* and the constructive notice of any potentially aggrieved persons, any future action filed by aggrieved persons challenging Director O'Brien's December 21, 2011 decision would be dismissed by the Superior Court for failure to exhaust administrative remedies and subject to the primary jurisdiction doctrine.

V. EQUITABLE ESTOPPEL AGAINST CITY OF SEDONA

In Arizona, the elements of equitable estoppel are: "(1) the party to be estopped commits acts inconsistent with a position it later adopts; (2) reliance by the other party; and (3) injury to the latter resulting from the former's repudiation of its prior conduct." *Valencia Energy Co. v. Arizona Dep't of Revenue*, 191 Ariz. 565, ¶ 35, 959 P.2d 1256, ¶ 35 (1998). In *Freightways, Inc. v. Arizona Corp. Comm'n*, 129 Ariz. 245, 248, 630 P.2d 541, 544 (1981), the Arizona Supreme Court disapproved of the rule prohibiting the application of principles of equitable estoppel against a sovereign, stating that estoppel will be applied against a sovereign, even a sovereign exercising its governmental functions, when justice dictates (*quoting Silver City Consol. Sch. Dist. No. 1 v. Bd. of Regents*, 75 N.M. 106, 401 P.2d 95, 99 (1965) (" 'We recognize that estoppel in its usual sense is not generally applicable against a sovereign in the exercise of governmental functions, but where right and justice demand it, the doctrine will be applied.' "). The government may be estopped only when its "wrongful conduct threatens to work a serious injustice and ... the public interest would not be unduly damaged." *Valencia Energy Co.* at ¶ 33, 959 P.2d at ¶ 33, *quoting Freightways*, 129 Ariz. at 248, 630 P.2d at 544. In order to find that the public

interest would be unduly damaged, the Arizona Supreme Court in *Freightways* stated “that where the application of estoppel will not affect the exercise by the state of its governmental powers and sovereignty, or bind it by unauthorized acts of its officers and employees, estoppel will, when justice dictates, be applied to the state.” *Freightways*, 129 Ariz. at 248, 630 P.2d at 544.

A. **The City’s Recent Alleged Violations Pertaining to the Son Silver West Property are Inconsistent with Director O’Brien’s December 21, 2011 Decision and the Actions of the City for Nearly 4 Years Thereafter**

As set forth in greater detail in the Statement of Facts section and subsection III.B above, Director O’Brien’s December 21, 2011 decision arose out of his enforcement of the Sedona LDC and 1992 CUP with regard to allowable uses and structures on the Son Silver West Property. As the City’s zoning administrator, Director O’Brien was charged with the statutory authority and responsibility to enforce the City of Sedona LDC and the 1992 CUP. As part of this decision, Director O’Brien identified no outstanding violations of the Sedona LDC and 1992 CUP and requested that Rio Robson submit a site plan and photographs of the existing uses and structures on the Son Silver West Property. Director O’Brien explained the following purpose for the requirement that Rio Robson submit the site plan and photographs to the City:

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won’t be question with what is allowed and what is not allowed.

Following the December 21, 2011 decision, Director O’Brien sent an email and memorandum on May 9, 2012 to fellow staff and future Director Audree Juhlin notifying them of his decision to use the photos submitted by Rio Robson to establish the permitted legal non-conforming uses and structures as a baseline for the future. The City of Sedona later accepted the conceptual site plan and March 1, 2012 photographs submitted by Rio Robson and never rescheduled the pending Board of Adjustment hearing. When Director Audree Juhlin issued a notice of violation to the Robsons on October 8, 2014, she failed to assert any violations pertaining to the uses or structures on the Son Silver West Property. Instead, her October 8, 2014 notice addressed violations on the Vacant Tract 40, the Arrow Property and the Bowstring Property only. It was not until our September 8, 2015 meeting, almost 4 years after Director O’Brien’s December 21, 2011 decision, that the City of Sedona discussed alleged violations on the Son Silver West Property which were previously addressed and resolved by Director O’Brien’s enforcement decision finding no violations. In the event Director Juhlin were to issue a formal notice of violation consistent with the allegations discussed during our September 8, 2015 meeting, such notice of violation would be contrary to Director O’Brien’s December 21, 2011 decision.

B. The Robsons Relied on Director O'Brien's December 21, 2011 Decision.

In reliance on the December 21, 2011 decision by Director John O'Brien finding no use or structural violations of the LDC and 1992 CUP existing on the Son Silver West Property as set forth in the above Statement of Facts (SOF #24), the Robsons undertook significant actions and substantial investments with regard to their Son Silver West business.

C. The Robsons Would be Substantially Damaged as a Result of the City's Repudiation of Director O'Brien's December 21, 2011 Decision.

In the event the City were to issue a Notice of Violation consistent with the alleged violations pertaining to the Son Silver West Property discussed at our September 8, 2015 meeting, the Robsons would suffer substantial injuries as a result of the City's repudiation of Director O'Brien's December 21, 2011 decision. Some of the allegations discussed included: (1) limiting the total outdoor retail display area on Tracts 41 and 42 to 5,000 s.f., (2) requiring 1,950 s.f. within the original home/gallery structure to be used as a single family residence, (3) removing any enclosed commercial retail areas which exceed 2,250 s.f., (4) converting certain buildings from retail uses and workshop areas to storage sheds, (5) and removing shade structures which the City has no evidence of issuing a building permit for. Requiring compliance with these alleged violations would severely injure the Robson's Son Silver West business and financial commitments they have made in reasonable reliance on Director O'Brien's decision.

D. The City's Wrongful Conduct Threatens to Work a Serious Injustice to the Robsons and the Public Interest Would Not be Unduly Damaged by the Application of Estoppel against the City.

Balancing the equities, the interest of the public would not be damaged by upholding the validity of Director O'Brien's December 21, 2011 decision, and there is no threat to the sovereignty of the City in upholding the validity of that decision as issued inasmuch as it has been honored by the City for nearly 4 years since then. Due to the unique legal non-conforming use at issue in this case, preventing the City from bringing a CUP revocation or suspension action would not affect the exercise by the City of its general governmental powers to apply its LDC city-wide. The Sedona LDC no longer allows the expansion of a legal non-conforming use through the administrative approval of a CUP. Thus, the 1992 CUP that was being enforced by Director O'Brien was truly unique. On the other hand, the damage that would be done to the Robsons, who relied upon the Director's decision in the operation of its Son Silver West business since 2011, would be of great magnitude.

VI. CITY OF SEDONA'S AUTHORITY TO ACCEPT AND PROCESS A MINOR AMENDMENT TO THE COMMUNITY PLAN CHANGING THE LAND USE DESIGNATION OF THE 0.48-ACRE VACANT TRACT 40 FROM SINGLE FAMILY RESIDENTIAL TO COMMERCIAL IN ORDER TO ALLOW CUSTOMER AND EMPLOYEE PARKING FOR SON SILVER WEST

Ariz. R. Stat. § 9-461.06(D) provides the following definition of "major amendment" to a general plan, or in this case, the City of Sedona's Community Plan:

- D. At least sixty days before the general plan or an element or major amendment of a general plan is noticed pursuant to subsection E of this section, the planning agency shall transmit the proposal to the planning commission, if any, and the governing body and shall submit a copy for review and further comment to:

...

7. If the general plan or an element or major amendment of the general plan is applicable to property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461, the attorney general. **For the purposes of this paragraph, "major amendment" means a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element.** (Emphasis added).

The Implementation Element of the City of Sedona Community Plan, page 113, acknowledges this statutory major amendment requirement by stating:

As defined by ARS 9-461.06, a **major amendment is defined as a substantial alteration of the City's land use mixture or balance** as established in the Community Plan's Land Use Element. It is up to the City to develop criteria that meet this definition. (Emphasis added).

The Implementation Element then provides the following Major Amendment Criteria which are used to determine the need for a Major Amendment to the Community Plan:

IMPLEMENTATION ELEMENT OF SEDONA COMMUNITY PLAN 2014

Major Amendment Criteria

The following criteria will be used to determine the need for a Major Amendment. These criteria do not apply to amendments proposed in conjunction with a Specific Plan within a Community Focus Area. Amendments in conjunction with these Specific Plans are all considered Minor Amendments.

A. A change to the Future Land Use Map where:

1. There is an increase in density beyond the density range of a specific residential land use category and the density allowed by the Zoning Map.
2. There is an increase in residential density above 12 DU/AC.
3. There is a change in the land use designation from:
 - Residential to Commercial; Commercial/Lodging and Planned Area
 - Public/Semi-Public to Residential; Commercial; Commercial/Lodging and Planned Area.
 - Planned Area to Commercial; Commercial/Lodging.
 - Commercial to Commercial/Lodging if outside the Lodging Area Limits in the Future Land Use Map designation.
 - Parks and Open Space to any other land use designation.
4. A new land use designation is applied to the Map.

B. A modification to the text of the Community Plan that proposes:

1. A change in the density ranges within the residential land use categories or a change in the intensity of use in any land use category.
2. Substantial changes to goals and policies in the Land Use, Housing and Growth chapter.
3. Addition of a new land use designation.

Minor Amendments

All amendments to the Community Plan that are not a new or re-adopted Plan or a Major Amendment are considered Minor Amendments. Minor Amendments may be considered and approved at any time by an affirmative vote of the City Council. Minor amendments are subject to public participation procedures adopted by the City Council.

A Minor Community Plan Amendment application requesting a change in the land use designation for Vacant Tract 40, measuring only 0.48 acres, from "Single Family Low Density" to "General Commercial" would be permitted because the requested amendment would not constitute a "substantial alteration of the municipality's land use mixture or

balance as established in the municipality's existing general plan land use element." First, Sedona's Existing Land Use Plan included within the 2014 Community Plan already identifies the Son Silver West Property (Tracts 42 and 41) as General Commercial. See SOF #25, *supra*. Thus, the proposed amendment to allow customer parking on Vacant Tract 40 would not be a substantial alteration of the municipality's existing land use mixture for that area. Second, the statutory definition of a "major amendment" evaluates the proposed change in land use in the context of the entire land use mixture and balance established in Sedona's Community Plan. This interpretation of the statutory language is consistent with the general plan amendment procedures established by other municipalities throughout this state (e.g. City of Phoenix General Plan provides 5-square mile and 3-square mile minimum area requirements for a major general plan amendment and a 10-gross acre minimum size requirement for a minor general plan amendment).

As the zoning administrator and the Sedona Community Development Department Director, Ms. Juhlin would have the authority to interpret whether or not an application to change the land use designation of the 0.48-acre Vacant Tract 40 parcel to allow a future rezoning for parking uses necessary for customer parking generated by an existing commercial business along SR 179 would constitute a substantial alteration of Sedona's land use mixture or balance. Upon finding no substantial alteration, the Director would be authorized to accept a Minor Community Plan Amendment application for Vacant Tract 40.

VII. CONCLUSION

We would request a follow up meeting to discuss the contents of this memorandum and potential solutions for the violations alleged with regard to the Arrow Property, Bowstring Property and Vacant Tract 40 Property. Admittedly, these properties were not included in the 1992 CUP approval or Director O'Brien's December 21, 2011 decision. Based upon the 1992 CUP, the 1993 Plan and permits issued, the correspondence received and inspections performed by Director O'Brien between 2006 and 2012, and the December 31, 2011 decision from Director O'Brien, we are of the opinion that all existing uses, structures and parking areas on the Son Silver West Property - Tracts 42 and 41 - are permitted as a vested legal non-conforming use and the City of Sedona would be estopped from issuing violations to the Robsons contrary thereto. Regardless, we are willing to submit an engineered site plan with dimensions and professional photographs keyed to the site plan for the Son Silver West Property. The uses and structures existing on the Son Silver West Property today were in existence at the time of Director O'Brien's December 21, 2011 decision. There have been no modifications to the Son Silver West Property in that 4-year period. The engineered site plan and photographs will supply the City with confidence when responding to any future allegations or inquiries regarding the uses being conducted on the Son Silver West Property.

REQUEST OF: Linda Rose Robson

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT
WAS FILED FOR RECORD IN COCONINO COUNTY,
STATE OF ARIZONA

FEE NO.

28852

10.0

STATE OF ARIZONA

County of

ss. I herch

HELEN I. HUDGENS

COUNTY RECORDER

REQUEST OF:

FIRST AMERICAN TITLE INS. CO. OF AZ

in DOC

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT
WAS FILED FOR RECORD IN COCONINO COUNTY
STATE OF ARIZONA

\$ 10.00 FEE NO. 4618

DOCKET 1144 PAGE 786
DATE MAR 04 1987-4 30

at the request of

When recorded, mail to

William B. and Linda Rose Robson
1476 Hwy 179
Sedona, AZ 86336

By

Deputy Recorder

Photostated
Fee

Order No. 071974

JOINT TENANCY DEED

For the consideration of Ten and NO 100 Dollars, and other valuable considerations, I or we,

JOHN T. BROOKS and SALLY M. BROOKS, husband and wife

the GRANTORS

do hereby convey to

WILLIAM B. ROBSON and LINDA ROSE WEST ROBSON, husband and
wife

the GRANTEES

not as tenants in common and not as a community property estate, but as joint tenants with right of survivorship.

the following described real property situate in Coconino

County, Arizona.

Tract 41, BROKEN ARROW SUBDIVISION, according to the plat of
record on file in the office of the County Recorder of Coconino
County, Arizona, in Book 2 of Maps, page 71.

EXCEPTING AND RESERVING unto the United States, pursuant to the
provision of the Act of August 1, 1946 (Stat. 755), all uranium,
thorium or any other material which is or may be determined to
be peculiarly essential to the production of fissionable materials,
whether or not of commercial value, as set forth in the Patent to
said land.

SUBJECT TO: Existing taxes, assessments, liens, encumbrances, covenants, conditions,
restrictions, rights of way and easements of record.

And the Grantor, do warrant the title against all persons whomsoever, subject to the matters above
set forth.

The grantees by signing the acceptance below evidence their intention to acquire said premises as joint
tenants with the right of survivorship, and not as community property or as tenants in common.

Dated this 15th day of January 1987

Accepted and approved:

William B. Robson
WILLIAM B. ROBSON

John T. Brooks
JOHN T. BROOKS

be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as set forth in the Patent to said land.

SUBJECT TO: Existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

And the Grantor, do warrant the title against all persons whomsoever, subject to the matters above set forth.

The grantees by signing the acceptance below evidence their intention to acquire said premises as joint tenants with the right of survivorship, and not as community property or as tenants in common.

Dated this 15th day of January 1987

Accepted and approved:

William B. Robson
WILLIAM B. ROBSON

John T. Brooks
JOHN T. BROOKS

Linda Rose West Robson
LINDA ROSE WEST ROBSON

Sally M. Brooks
SALLY M. BROOKS

STATE OF ARIZONA }
County of YAVAPAI } ss.

This instrument was acknowledged before me this
21 day of JANUARY, 1987 by
William B. Robson and Linda Rose West Robson

William A. Flick
Notary Public

My commission expires: 9-26-87

STATE OF ARIZONA }
County of Maricopa } ss.

This instrument was acknowledged before me this
26 day of January, 1987 by
John T. Brooks and Sally M. Brooks

Glenn Clark
Notary Public

My commission expires: 11-1-88

FATCOA 6052 Rev. 9-79

1144-786

69543

1177-243



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

MEMORANDUM

TO: Francis J. Slavin and Heather Dukes, Legal Counsel for the Robsons
FROM: Audree Juhlin, Community Development Director
DATE: November 10, 2015
RE: Son Silver West Legal Memorandum dated September 22, 2015

On September 8, 2015, City staff met with the Robsons and legal counsel for Son Silver West regarding outstanding alleged Code violations. At the conclusion of that meeting, it was mutually agreed to suspend further and more formal code enforcement actions until legal counsel for the Robsons had the opportunity to prepare a legal opinion of the concerns discussed at this meeting.

In response, legal counsel submitted a Memorandum to the City on September 22, 2015 detailing multiple findings and opinions. As a result, City staff conducted a thorough analysis of this Memorandum and concluded that while the document and attachments provided a detailed overview of the property history, it did not provide substantive proof of formal approvals supporting existing conditions relative to the identified alleged Code violations.

At the crux of the discussion is whether or not then Director John O'Brien purported to exercise legal authority to approve changes to the 1992 Conditional Use Permit (CUP) consistent with conditions at Son Silver West today. Further, whether any credible documentation has been provided which would reasonably demonstrate what conditions existed in 2011. The City's position is that Director O'Brien never gave any formal approval; and regardless, would not have had the authority to do so. Further, even if Director O'Brien had the authority to administratively change the CUP, and even if the materials submitted by the Robsons were considered complete in spite of the fact they were never confirmed as such by Director O'Brien, those materials nevertheless fail to substantiate that conditions outlined in the attached Notice of Violation were in fact present prior to 2011 and not created afterward.

Land use on this site is governed by a regulatory conditional use permit (CUP). Former Director O'Brien had no authority to conditionally approve changes that directly affect the approved 1992 CUP, through unilateral administrative action. The Land Development Code (LDC), Subsection 402.12 (Conditional Use Permit – Validity and Revisions) states, "*Any proposed revisions or changes to an approved conditional use permit application shall be submitted in the same manner and subject to the same approval process as the original review.*" Because Son Silver West has made changes deviating from the 1992 CUP, these changes are subject to review and consideration as prescribed in Section 402 (Conditional Uses). This section of the LDC does not provide for administrative consideration or approvals at a staff level. Therefore, former Director O'Brien did not have the authority to substitute an administrative action for the regulatory requirements prescribed in the LDC relating to modification of a CUP and unilaterally approve changes to the CUP.



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The Memorandum and attachments did not provide sufficient proof of any formal approvals that support existing conditions. When reviewing the email exchange, it is clear that a March 1, 2012 deadline was established for the Robsons to supply the requested information. It is also clear based on a May 8, 2012 email from former Director O'Brien to staff that he had not received the requested documentation from the Robsons. As of today's date, staff has been unsuccessful in locating any such documentation that John O'Brien, or any other staff may have received in response to the 2011 email request. What the email exchange in December of 2011 does clearly illustrate is a palpable level of frustration in former Director O'Brien resulting from his many years of attempting, unsuccessfully, to achieve cooperative solutions to Son Silver West's outstanding violations.

After thorough review, staff has determined that the documentation supplied by the Robsons in the summer of 2015, is insufficient, does not satisfy the 2011 email request and fails to substantiate that conditions subject to the attached Notice of Violation were present in 2011. The map submitted is not considered an adequate site plan, but rather a more informal marketing map used for customers to navigate the site. The map does not accurately portray what is on site and the photos are not adequately keyed to the map. The buildings are not correctly represented in size, shape, orientation and location, and it does not sufficiently depict property lines. For instance, the Chapel is shown on the 1476 SR179 property, when in fact it is located on the 61 Arrow Drive property. Additionally, the map does not depict shade structures or outdoor display areas. Since the original impetus for former Director O'Brien's request was a question regarding the legality of the shade structures, the logical result would have been a site plan that showed the shade structures.

Further, staff was unable to satisfactorily evaluate the pictures submitted as they are black and white and the exterior photos are of poor quality; many are washed out by sunlight or include significant shadows and do not provide staff with a clear understanding of the size, scope, location and nature of the conditions at that time the photos were taken. None of the buildings have photos of all of the exteriors and large portions of the site seem to have been excluded, based on the best guess of photo locations by staff as shown on the map.

In conclusion, staff believes that while the Memorandum is thorough and for the most part provides a detailed overview of the history of the property, the information presented does not provide sufficient proof that any formal approvals exist allowing the expansion of the site beyond what was approved in the 1992 CUP. Further, there is a mutual obligation for the City to correctly administer the applicable laws and for Son Silver West to conform to those laws. Moreover, the City is compelled to ensure that any misapplication of laws in the past, real or perceived, is corrected. Therefore, staff is reinstating formal code enforcement actions as identified in the attached Notice of Violation.



City of Sedona Community Development Department

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NOTICE OF VIOLATION

November 10, 2015

Son Silver West Gallery Inc.
Robson Design
Robson LR Living Trust
Robson Linda Rose and William B Trustees
C/O Rio Robson
1476 State Route 179
Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has determined that your businesses, Son Silver West Gallery Inc. and Robson Design continue to operate in violation of the Sedona Land Development Code and City Code. On October 8, 2014, a Notice of Violation (NOV) for several code violations was issued to Son Silver West Gallery, Inc. and Robson Design. As a result of that NOV, you began working with City staff towards submitting an application for an amendment to the Sedona Community Plan and rezoning that, if approved, would have addressed those code violations. City Staff made the determination to suspend code enforcement actions pending the outcome of those applications.

However, on August 12, 2015, the City received notice from your agent, Brian Furuya, of Aspey, Watkins and Diesel, PLLC, that you were withdrawing these applications. As a result of this decision, the City had no alternate course to remedy non-compliance and had to reinstate code enforcement activities. However, based on an additional meeting on September 8, 2015 with you and your new legal counsel, staff once again agreed to suspend formal code enforcement action until your counsel could submit information relative to the identified issues. However, after review of the documentation submitted, staff found no evidence that provided any formal approval allowing for the existing conditions and expansion above that which was approved as part of the 1992 CUP. Therefore, staff is once again resuming formal code enforcement actions as evidenced in this Notice of Violation.

As discussed at the September 8, 2015 meeting, in addition to the violations identified in the October 8, 2014 NOV, additional violations have been identified that also require immediate attention. These violations are based on the statements contained in your Community Plan amendment and rezoning applications, citizen input, and staff observations.

As you are aware, because Son Silver West Gallery Inc. was operating as a commercial business on a single-family residential property (1476 SR 179, APN 401-31-012A) prior to the City's incorporation in 1988, it is considered grandfathered as a legal nonconforming use. Based on Article 12 (Nonconforming Situations) of the Sedona Land Development Code, Son Silver West, as operating currently, is a nonconforming development containing a nonconforming use. Pursuant to this article, a legal nonconforming development and use cannot expand unless the expansion conforms to the regulations



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specified for the zoning district in which it is located. When a nonconforming use occupies a building, expanding the use into additional buildings or land areas is prohibited. As a result of illegal expansions in the early 1990s, Conditional Use Permit (CUP) 92-3 was granted by the Planning and Zoning Commission on September 15, 1992.

Condition 1 of the Conditions of Approval for CUP 92-3 (enclosed) states that the “uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2)”. The uses and physical improvements listed in the staff report (enclosed) are as follows:

- 2,250 square feet of retail space in enclosed buildings
- 5,000 square feet of outside retail display area
- 1,950 square foot single family dwelling
- 1,300 square foot pottery shop with kiln
- 590 square feet of storage space
- 750 square foot workshop
- Sculpture
- 2 free standing signs
- Building coverage at approximately 17%
- Parking located between gallery and Highway 179 (*This was later modified to the south-side of the property to address State Route 179 improvements*)

Staff has determined that Son Silver West has expanded beyond this scope and is conducting business activity in violation of CUP 92-3, single-family zoning regulations, and nonconforming use restrictions. In addition to the significant expansion of the retail operation at 1476 SR 179 (APN 401-31-012A), the expansion also includes the use of three nearby single-family residential properties also zoned RS-18b (61 Arrow Drive, 365 Bowstring Drive, 1535 SR 179). As explained in the past, the existing zoning for these single-family residential lots (RS-18b) does not allow for commercial uses.

The following is a summary of the outstanding Code violations and the timeframe for compliance:

- A. **VIOLATION: 61 Arrow Drive, Single-family house (APN 401-31-016)** alleged violations include warehousing, manufacturing (welding and assembly), shipping/receiving and employee parking which are uses that are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b), Article 9 (Development Standards), Article 12 (Nonconforming Situations), and City Code Chapter 15 (Building Code).

During discussions with you and Mr. William Robson, it was disclosed that Mrs. Robson has an office space at 61 Arrow Drive. Because this location is not Mrs. Robson’s primary residence, this use is not in compliance with Sedona Land Development Code, Article 6 (District Regulations RS-18b), and Article 9 (Development Standards).

Also in the early 1990s it was discovered that a shed was constructed in the rear portion of the property without a building permit. An after-the-fact building permit application was submitted in



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1993. Sometime after this approval, the shed was converted to a commercial “Chapel” and an unpermitted block wall was constructed across property lines in order to permit a portion of the yard at 61 Arrow Drive to become a part of the 1476 SR 179 (APN 401-31-012A) retail property. These modifications and construction activity are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b), Article 9 (Development Standards), Article 12 (Non-Conforming Situations), and City Code Chapter 15 (Building Code).

- A.1 **CORRECTIVE ACTION:** *Cease and desist all commercial use of this property including but not limited to employee parking, warehousing, manufacturing (welding and assembly) activities, shipping/receiving associated with Son Silver West Gallery and Robson Design and return the structure back to a single family house and use within 30 days of the date of this Notice.*
- A.2 **CORRECTIVE ACTION:** *Cease and desist any office/commercial use that is not in compliance with the Land Development Code Home Occupation requirements within 30 days of the date of this Notice.*
- A.3 **CORRECTIVE ACTION:** *Submit an application for a compliant building permit for the block wall constructed on 61 Arrow Drive and 1476 SR179 without a permit or remove wall within 30 days of the date of this Notice.*
- A.4 **CORRECTIVE ACTION:** *Cease using space located on the rear portion of 61 Arrow Drive adjoining to 1476 SR179 property as commercial space within 30 days of the date of this Notice.*
- A.5 **CORRECTIVE ACTION:** *Revert “Chapel” back to its approved use as a shed within 30 days of the date of this Notice.*
- B. **VIOLATION:** 365 Bowstring Drive, Single-family house (parcel #401-31-020) issues include employee parking and commercial activities including warehousing of merchandise
 - B.1 **CORRECTIVE ACTION:** *Immediately cease and desist all use of this property for Son Silver West Gallery and Robson Design for employee parking.*
 - B.2 **CORRECTIVE ACTION:** *Immediately cease and desist all commercial activities including but not limited to warehousing for Son Silver West Gallery and Robson Design.*
- C. **VIOLATION:** 1535 SR 179, Vacant (parcel #401-31-011) issues include “over-flow” parking, receiving and storage of merchandise which are not in compliance with the Sedona Land Development Code, Article 6 (District Regulations RS-18b) and Article 12 (Non-Conforming Situations).
 - C.1 **CORRECTIVE ACTION:** *Immediately cease and desist all use of this property for parking.*
 - C.2 **CORRECTIVE ACTION:** *Immediately cease and desist all use of this property for commercial purposes including but not limited to shipping/receiving activities and storage of merchandise.*
- D. **VIOLATION:** 1476 SR 179 (parcel #401-31-012) Uses approved for the commercial activity are bound by conditions of approval of the 1992 CUP. Condition 1 states that uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992 and as approved by the Planning and Zoning Commission (alternative site plan #2). Therefore, all uses and physical improvements beyond those outlined above are in violation of the



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conditions of approval for the 1992 CUP. Condition 6 states that outside sales/display area shall be screened by a six-foot high fence; the existing outside sales/display area is not in compliance with this requirement. Condition 9 states that all exterior outside lighting shall be shielded; the existing outdoor lighting does not meet shielded lighting requirements.

- D.1 **CORRECTIVE ACTION:** Remove all outdoor retail display area in excess of the approved 5,000 square feet within 30 days of the date of this Notice.
- D.2 **CORRECTIVE ACTION:** Remove all enclosed building retail areas in excess of the approved 2,250 square feet within 30 days of the date of this Notice. Buildings "A and B" as included on the site plan for the recent applications need to be returned to storage sheds and not retail display or other commercial purposes.
- D.3 **CORRECTIVE ACTION:** restore 1,950 square feet of the primary dwelling unit back to single-family residential within 30 days of the date of this Notice.
- D.4 **CORRECTIVE ACTION:** In accordance with Condition 6 and the Sedona Land Development Code, to minimize visual impacts and maintain an attractive appearance of the outdoor display area, suitable screening needs to be incorporated and found to be in compliance by the Community Development Director within 30 days.
- D.5 **CORRECTIVE ACTION:** In accordance with Condition 9 and the Sedona Land Development Code, update outdoor lighting fixtures to be shielded and found to be in compliance by the Community Development Director within 30 days of the date of this Notice.
- D.6 **CORRECTIVE ACTION:** Submit building permit applications for the shade structures erected and/or expanded without prior approvals within 30 days of the date of this Notice.
- D.7 **CORRECTIVE ACTION:** Submit a building permit application for the wall/fence erected along the backside of the property without prior approvals within 30 days of the date of this Notice.

Note: Several of the above referenced corrective actions may require the submittal and approval of a building permit. If unsure whether a building permit is required, please check with staff prior to starting the work.

Revocation of Conditional Use Permit (Section 402.10 Sedona Land Development Code). The Sedona Land Development Code states that if it is determined that the conditions of approval for a CUP are not being met, then the CUP is suspended automatically. You are hereby officially notified that your property is not in conformance with the conditions of approval of the 1992 CUP based on the issues outlined in this Notice. If the issues identified in this Notice are not corrected within 30 days, the Planning and Zoning Commission will hold a public hearing within 40 days in accordance with the procedures prescribed in subsection 402.04 of the Sedona Land Development Code. If not satisfied that the conditions in question are being complied with, the Commission may revoke the conditional use permit or take action necessary to ensure compliance.

Staff understands that you believe many of these violations have been addressed through an email exchange with former Community Development Director John O'Brien in 2011/2012. While we are aware of certain limited communications discussing the site conditions, staff's records reflect that no formal approval in conformance with the Sedona Land Development Code or Sedona City Code has been granted. Staff believes that while the documentation submitted by your legal counsel provides a



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detailed overview of the history of the property, the information presented does not offer satisfactory proof that any formal approvals exist allowing the expansion of the site beyond what was approved in the 1992 CUP. Further, based on the regulatory process outlined in the Land Development Code, former Director O'Brien did not have the legal authority to approve any modifications to this CUP.

Business Licenses and Regulations Section 5.05.020 of the Sedona City Code requires that all businesses be in compliance with any and all regulations specified in the Sedona City Code, Sedona Land Development Code, and Arizona Revised Statutes. Per Section 5.05.040(A) of the Sedona City Code, a business license may be suspended, revoked or deemed invalid, if it is determined that a business owner has violated or is not in compliance with either the Sedona City Code, Sedona Land Development Code or the Arizona Revised statutes. It is considered unlawful to operate a business within the Sedona City limits without a business license.

PENALTIES: In addition to the revocation or suspension of the conditional use permit, failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 per offense for each day that offense is occurring or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

It is our hope that you will voluntarily bring the alleged violations into compliance or provide evidence of compliance within the 30 day time period. Staff will schedule a walk through inspection in 30 days from the date of this NOV to verify compliance. Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audree Juhlin, Director

Community Development Department

cc: Justin Clifton, Sedona City Manager
Karen Daines, Assistant City Manager
Robert Pickels, Sedona City Attorney
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Sedona Police Chief
Cherie Wright, Finance Director

Encl. CUP-92-3 Conditions of Approval
October 8, 2014 Notice of Violation



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86336
(602) 282-3113
T DD (602) 282-3113
FAX (602) 282-7207



September 21, 1992

William and Linda Rose Robson
Son Silver West Gallery
1476 Highway 179
Sedona, AZ 86336

RE: Case number CUP 92-3

Dear Mr. and Mrs. Robson:

On September 15, 1992, the Planning and Zoning Commission approved case number CUP 92-3 subject to the attached conditions of approval.

As the applicant in the above matter, your signature is required at the bottom of this letter confirming your agreement to comply with the attached conditions. Please sign and date in the space provided and return this letter and the conditions to the Department of Community Development as soon as possible.

Sincerely,

John P. O'Brien

John P. O'Brien, Associate Planner
Department of Community Development

Enclosure

CONFIRMATION

[Signature]

Applicant

October 20, 1992

Date

**CONDITIONS OF APPROVAL AS APPROVED BY THE
PLANNING AND ZONING COMMISSION FOR CASE NUMBER CUP 92-3
SON SILVER WEST GALLERY**

1. Uses and physical improvements on the subject property shall not exceed those as characterized in the staff report dated September 15, 1992, and as approved by the Planning and Zoning Commission (alternate site plan #2).
2. The applicant shall be responsible for the provision of Highway 179 improvements as specifically required by the Arizona Department of Transportation.
3. Encroachment permits shall be obtained from ADOT for all Highway 179 improvements.
4. All ADOT required improvements to Highway 179 shall be completed to the specifications of ADOT and improvements to the new on-site parking area to the specifications of the City Engineer within one year of conditional use permit approval.
5. Prior to grading permit issuance, grading and drainage plans for the proposed changes to the drainage path on the property shall be approved by the City Engineer.
6. The outside sales/display area shall be screened by a six-foot high fence/ocotillo cactus to the satisfaction of the Director of Community Development.
7. The parking lot directional sign shall be installed in accordance with the City's Sign Regulations and shall be consistent with the design theme of the other wood signs at the gallery.
8. The existing mercury vapor light located in the display area shall be changed to a sodium type and shielded so the illumination is confined to the subject property boundaries.
9. All other exterior outside lighting shall be shielded to the specifications of the Director of Community Development.
10. Adequate screening of the parking lot along the southern boundary of the subject property shall be provided to the specifications of the Director of Community Development.
11. Existing trees located within the proposed parking area shall be maintained and incorporated into the new parking lot. In the event such trees do not survive due to vehicular compaction, replacement with trees of a comparable size and type shall be required.
12. Individual parcels shall be combined into a single parcel and maintained under common ownership for purposes of operation and maintenance of the authorized uses.



2940 Southwest Drive
P.O. Box 30002
Sedona, Arizona 86339
(602) 282-3113
TDD (602) 282-3113
FAX (602) 282-7207

AGREEMENT

This document sets forth the terms and conditions of an agreement between the City of Sedona and the owners of the Son Silver West Gallery.

WHEREAS, Son Silver West Gallery, located at 1476 Hwy. 179 in Sedona, Arizona is a nonconforming business use in a C-RS-18,000 zone (Single Family Residential); and

WHEREAS, the nonconforming aspects of said use were expanded in 1989 without benefit of approval of a conditional use permit, as required by Section 204.01 of the City of Sedona Interim Zoning Ordinance; and

WHEREAS, an "after the fact" conditional use permit was approved by the Planning and Zoning Commission for the City of Sedona on September 15, 1992; and

WHEREAS, in association with the granting of the conditional use permit, certain conditions of approval were acknowledged and agreed to by the owners of Son Silver West Gallery, Mr. and Mrs. Bill Robson, on October 20, 1992; and

WHEREAS, certain site improvements associated with said approval were not completed, as required by ordinance, within one year from the date of the conditional use permit approval; and

WHEREAS, the owners of Son Silver West Gallery, Mr. and Mrs. Bill Robson, have requested additional time in which to complete said improvements;

Now, therefore, the following **AGREEMENT** represents the terms and conditions under which the noted improvements are to be provided.

Parking lot screening and landscaping (condition 10 of the Planning and Zoning Commission's approval on September 15, 1992)

- The south and east sides of the parking lot shall be screened with earthen berms and landscaped to the satisfaction of the Director of Community Development no later than July 1, 1994.

Mercury vapor lighting (condition 8)

- All mercury vapor lighting shall be eliminated no later than August 1, 1994.

Other lighting (condition 9)

- Parking lot lighting shall be installed no later than August 1, 1994. All lighting shall be shielded to the satisfaction of the Director of Community Development no later than August 15, 1994.

Display area screening (condition 6)

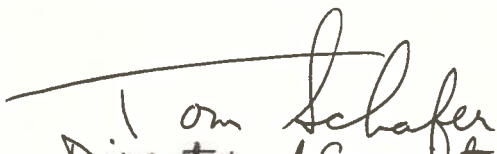
- Earthen berms shall be provided along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than August 1, 1994.
- Screen landscaping shall be provided within the earthen bermed area along the east side of the newly established display area in front of the gallery adjacent to Hwy. 179 to the satisfaction of the Director of Community Development no later than October 1, 1994.
- Additional visual screening of all outside display areas by use of a combination of earthen berming, landscaping and rustic fencing shall be completed to the satisfaction of the Director of Community Development no later than October 1, 1994.

Improvements to Hwy. 179 (condition 4)

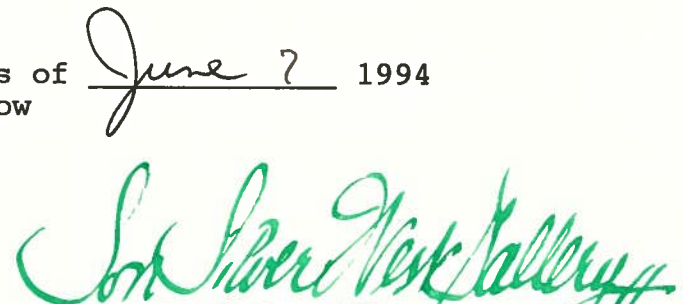
- All required improvements to Hwy. 179 shall commence no later than April 1, 1995, shall be diligently pursued and shall be completed no later than July 1, 1995.

In consideration of the fact that this agreement assumes public use of the newly established parking lot area on the south side of the property prior to the completion of Hwy. 179 improvements as required by the Arizona Department of Transportation, the owners hereby agree to hold harmless and indemnify the City of Sedona against all costs, damages, penalties, expenses and fees (including court costs and attorney's fees), from any and all liability claims that may result from, arise out of or relate to vehicular use of the site ingress/egress prior to completion of such improvements.

The agreement is hereby entered into as of June 7 1994
by parties so authorized as signed below


Tom Schafer
Director of Community Development
City of Sedona

(2)


Son Silver West Gallery
Julia Rose / Brent
William B. Corbrow



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

NOTICE OF VIOLATION

October 8, 2014

Son Silver West Gallery Inc.

Robson Design

C/O Rio Robson

1476 SR179

Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has determined that your businesses, Son Silver West Gallery Inc. and Robson Design are in violation of the Sedona City Code and the Sedona Land Development Code.

Because Son Silver West Gallery Inc. was operating as a commercial business on a single-family residential property (1476 SR 179, parcel #401-31-012A) prior to the City's incorporation in 1988, it is considered grandfathered as a legal non-conforming use. Based on review of City files, in 1992, Son Silver West Gallery representatives filed a Conditional Use Permit (CUP) application for consideration by the Planning and Zoning Commission. Because Son Silver West Gallery expanded its commercial use in 1989 without approval of a CUP, this request was necessary as the interim zoning code at that time did allow for the expansion of a legal non-conforming use with the approval of a CUP. The CUP was approved by the Planning and Zoning Commission on September 15, 1992 subject to conditions of approval.

Subsequent to the approval of the CUP, the City of Sedona changed the non-conforming use section of the Sedona Land Development Code and no longer allowed the expansion of legal non-conforming uses through the approval of a CUP. As explained to you in the past by former Director, John O'Brien, a legal non-conforming use which was lawful prior to the adoption of the City's Land Development Code but is unlawful by the use regulations for the zoning district, may continue only in the manner and to the extent that it existed at the time of the adoption of the Land Development Code. Based on Section 1204 (Non-Conforming Uses) of the Sedona Land Development Code, a grandfathered use cannot expand unless the expansion conforms to the regulations specified for the zoning district in which it is located. When a non-conforming use occupies a building, expanding the use into additional buildings or land areas is prohibited.

Unfortunately, at some point in time, after approval of the CUP in 1992, the Son Silver West Gallery once again expanded beyond its allowable area and without seeking approvals for these expansions. The expansion including the use of three nearby single-family residential properties zoned RS-18b. It is staff's understanding based on visual observations and comments you made during our meeting with you on Tuesday, September 23, 2014 that you are using the single-family residential property at 61 Arrow Drive, (parcel #401-31-016) as a warehouse and manufacturing site for both Son Silver West Gallery Inc. and Robson Design. It was also observed and verified by you that you are using the 365 Bowstring Drive property (parcel #401-31-020) for employee parking and the vacant lot at 1535 SR179, (parcel #401-31-011) for "over-flow" parking for Son Silver West Gallery customers. The existing zoning



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

for these three single-family residential lots (RS-18b) does not allow for these commercial uses. As indicated above, Section 1204 of the Land Development Code states that a legal non-conforming use cannot expand unless the expansion is in conformance with all applicable Codes. Because commercial activities are not allowed in the RS-18b single-family zoning district, this expansion is in violation of the Land Development Code, Article 6 (District Regulations) Section 605 (RS018b Single-Family Residential District) and Article 12 (Nonconforming Situations) Section 1204 (Non-Conforming Uses). While the RS-18b zoning district does have provisions for home occupation uses as set forth in Article 9 (Development Standards) Section 915 (Home Occupation Uses) of the Land Development Code, as we explained to you on September 23, 2014, your current use of these properties is not in conformance with and far exceeds these regulations.

On a related note, Section 5.05.020 requires that all businesses must be in compliance with any and all regulations specified in the Sedona City Code, Sedona Land Development Code, and Arizona Revised Statutes. Compliance includes but is not limited to compliance with any and all zoning ordinances and specified building uses. Per Section 5.05.040(A) of the Sedona City Code, a business license may be suspended, revoked or deemed invalid if it is determined that a business owner has violated or is not in compliance with either the City Code, Land Development Code or the Arizona Revised statutes, or that the business is delinquent in paying taxes or fees to the City. Because you are not currently in compliance with this section due at least in part to the below-referenced violations of the Sedona Land Development Code, your business license is subject to revocation and your right to continue to do business within the City can be lost if you do not come into complete compliance.

VIOLATIONS:

- Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses). Son Silver West Gallery Inc.'s unauthorized expansion onto neighboring single-family properties (61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179) is in violation of the Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses) – expansion of a non-conforming use.
- Sedona Land Development Code, Article 6 (District Regulations). The use of neighboring single-family properties (61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179) is a violation of Sedona Land Development Code, Article 6 (District Regulations) where the single-family zoning designation (RS-18b) does not allow for commercial uses, except as provided in the Home Occupation ordinance. The current use of these properties is not in conformance with the home occupation provisions.
- Title 5 (Business Licenses). You are in violation of Sedona City Code, Title 5, (Business Licenses and Regulations) by virtue of the fact that you are not complying with any and all regulations set forth in the Sedona City Code, Sedona Land Development Code and the Arizona Revised Statutes. Because of this fact, your business license may be suspended, revoked or deemed invalid.

CORRECTIVE ACTION NECESSARY:

Immediately cease all commercial activities at 61 Broken Arrow Drive, 365 Bowstring Drive and 1535 SR179. If you wish to use these properties in the future for commercial purposes, please schedule a meeting with Community Development staff to discuss your options. You do have the option to file for a major amendment to the Sedona Community Plan and a rezoning of the single-family residential properties to general commercial. In accordance with Arizona State Law, major amendments to the Community Plan are considered once per year and our next application submittal is tentatively scheduled for April 2015. The Planning and Zoning Commission and City Council would consider the



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

major amendment application in the summer and fall of 2015. Your zone change application could also be filed at the same time as the major amendment. Additionally, Staff can also discuss with you the Community Focus Areas specific planning process as outlined in the new Sedona Community Plan as another option for your consideration.

PENALTIES:

Failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audrey Juhlin, Director

Community Development Department

cc: Nick Gioello, Development Services Manager
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Sedona Police Chief
Mike Goimarac, Sedona City Attorney
Tim Ernster, Sedona City Manager



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

NOTICE OF VIOLATION

November 10, 2015, 2015

Son Silver West Gallery Inc.

Robson Design

C/O Rio Robson

1476 SR 179

Sedona, AZ 86336

Dear Mr. Robson,

This letter serves as official notice that the City of Sedona has identified a new issue related to your businesses, Son Silver West Gallery Inc. and Robson Design. On November 3, 2015 and subsequent days thereafter, staff has observed what appears to be a food service operation as part of Son Silver West's business located 1476 SR 179. These activities include the preparation, roasting, display and vending of chilis. Related to this activity is a sign advertising "Fresh Roasted Chilis" in front of Son Silver West.

As you are aware, Son Silver West Gallery Inc. is operating as a commercial business on a single-family residential property (1476 SR 179, parcel #401-31-012A) with an approved 1992 Conditional Use Permit (CUP). As such, Son Silver West is subject to those conditions of approval and cannot expand without proper approvals. In this case, as explained in the past, Son Silver West cannot expand beyond what was originally approved in the 1992 CUP. Any commercial changes or expansion beyond the 1992 CUP requires a Community Plan amendment and zone change.

VIOLATIONS:

Because the 1992 CUP does not provide for commercial food service, including food preparation, roasting, display and vending of food, Son Silver West is not in conformance with the 1992 CUP and is in violation of the following Sedona Land Development Codes:

Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses. Son Silver West's unauthorized inclusion of commercial food services at the 1476 SR 179 location is in violation of the Sedona Land Development Code, Article 12 (Non-Conforming Situations) Section 1204 (Non-Conforming Uses) – expansion of a non-conforming use.

Sedona Land Development Code, Article 4 (Conditional Uses) Section 402.12 Conditional Use Permit – Validity. Son Silver West's unauthorized inclusion of commercial food services at the 1476 SR 179 location is not permitted as part of its approved CUP.

Sedona Land Development Code, Article 6 (District Regulations). The inclusion of commercial food service at the 1476 SR 179 location is not a permitted use in the single-family zoning district in which Son Silver West is located.



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

Additionally, in speaking with representatives of Coconino County Health Department, it appears that Son Silver West did not obtain approvals applicable to commercial food services.

It is important to note that in accordance with Sedona City Code, Title 5, (Business Licenses and Regulations) a business license may be suspended, revoked or deemed invalid for a number of reasons, including a violation of or non-compliance with either Sedona City Code, Sedona Land Development Code, or the Arizona Revised Statutes. The inclusion of commercial food services on a single-family residentially-zoned property is considered a violation of the Sedona Land Development Code and is not a use that is provided for in the approved 1992 CUP.

CORRECTIVE ACTION NECESSARY:

- Immediately cease all commercial food service activity including the preparation, roasting, display and vending of produce, including but not limited to chilis.

PENALTIES:

Failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audree Juhlin, Director

Community Development Department

cc: Justin Clifton, Sedona City Manager
Karen Daines, Assistant City Manager
Robert Pickels, Sedona City Attorney
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Sedona Police Chief



CITY OF SEDONA

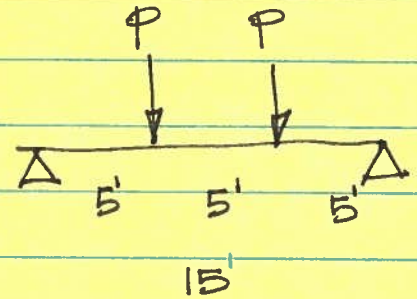
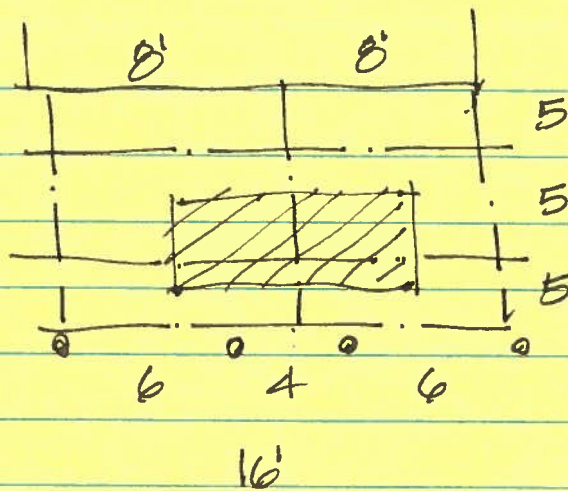
BUILDING SAFETY DIVISION

2940 Southwest Drive
Post Office Box 30002
Sedona, Arizona 86336
(602) 282-3269

APPLICATION FOR PLAN REVIEW AND BUILDING PERMIT

APPLICANT: COMPLETE NUMBERED SPACES - PRESS HARD TO MAKE COPIES										BUILDING PERMIT NUMBER B 1517					
1 CONSTRUCTION ADDRESS 476 Hwy 179					ZONE DIST.										
2 LEGAL LOT/SPACE #42		BLK.	SUB DIV./MOB. HOME PARK Broken Arrow			ZONING CASE #		B.A. CASE #							
3 PARCEL NO. 401.31.13		CENSUS TR.		COUNTY COC.			F. YD.		R. YD.	S. YD. 1	S. YD. 2	FRONTAGE	BLDG. HT.	LOT COVER %	
4 OWNER Bill Koken					PHONE 222.2555					REMARKS:					
5 MAILING ADDRESS same					ZIP										
6 LICENSE #					CITY SALES TAX #										
7 CONTRACTOR CWREY					PHONE										
8 ADDRESS					ZIP										
9 DESCRIBE WORK/SPECIFY USE to rear existing with structure					ZONING APPVD. BY: h					DATE:					
10 VALUATION SUBMITTED NA					REVISED VALUATION NA					FLOOD CONTROL APPVD. NA		HIGHWAY R.O.W. APPVD. NA		HEALTH DEPT. APPVD. NA	
11 LIST SOURCE OF UTILITIES		GAS CO.	ELEC. CO.	WATER CO. OR SOURCE		SEPTIC NO.		CONSTR. TYPE		OCCUPANCY	OCCUP. LOAD	NO. STORIES			
CULVERT SIZE		TOTAL CUT		TOTAL FILL		COMPACTION TESTS		RESID. AREA		GAR. AREA	MISC. AREA	COMML. AREA		BLDG. HT.	
		YDS.		YDS.		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		SPEC INSP. REQ'D		NO. OF DWELLING UNITS					
								<input type="checkbox"/> CONC. <input type="checkbox"/> STEEL <input type="checkbox"/> OTHER							
CONDITIONS FOR APPROVAL:					REMARKS:										
<p>No expansion of the existing roof or structure is authorized by this permit. Construction to comply with approved plans. Materials and finishes as approved by inspector at community development.</p>					1. new structures /										
					2. addition of exist g										
					3. while org. only.										
SIGNATURE OF BUILDING OFFICIAL/AUTHORIZED REPRESENTATIVE					DATE					BUDG/PERMIT APPVD. BY:					
<p>The building official shall require that contractors be licensed as required by Arizona State Law before issuing permits to same. The building official may also require contractors or builders to either be licensed or otherwise retain the services of someone who is so licensed or certified, as may be necessary to assure the proper installation of building components, equipment or appliances consistent with the technical codes or the approved installation specifications and standards. Homeowner builders may construct, add to, alter or remodel their own R-3 homes, provided they are personally occupying or occupy upon completion within thirty days of the final inspection. Non-occupancy or discontinued occupancy, until a period of one year has lapsed, shall constitute a violation of this code. The building official may furthermore report such activities to the Registrar of Contractors.</p>					PLAN REVIEW AND PERMIT FEES										
					SIGNATURE OF OWNER COC O					DATE					TOTAL FEES
<p>I hereby certify that I have read and examined this permit and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.</p>					PLAN CHECK DEPOSIT					\$ 20.70					
					PLAN CHECK FEE					\$ 47.25					
<p>The issuance of a permit based upon plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.</p>					BUILDING										
					ELECTRICAL										
<p>This permit becomes null and void if the construction work authorized is not begun within 180 days from date of issue or if at any time prior to final inspection and approval the work is suspended or abandoned for a period of 180 days.</p>					MECHANICAL										
					PLUMBING										
<p>CALL FOR INSPECTION COVER NO WORK UNTIL INSPECTED AND APPROVED</p>					GRADING PLAN CHECK										
					GRADING PERMIT										
Signature of Owner or Authorized Agent					OTHER										
					TOTAL DUE					\$ 77.95					
Date					LESS AMOUNT PAID										
					TOTAL DUE					\$ 77.95					

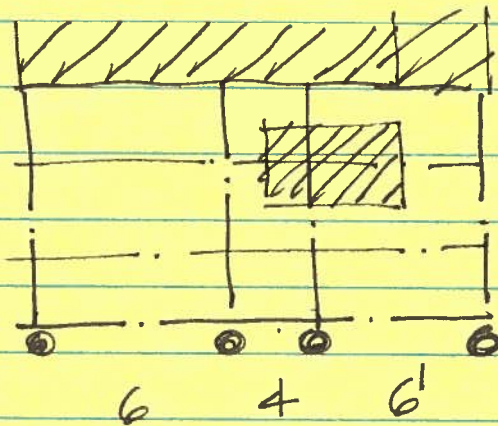
Approved by _____ Date _____



$$P = (5')(8')(35 \text{ psf}) = \underline{1400}^{\#}$$

$$M_{\text{max}} = PA = 1400(5) = 7000$$

$$S = \frac{7000(12)}{1250} = 67.2 \text{ IN.}$$



$$P = 5'(5')(35) = 875^{\#}$$

$$I = \frac{Pa}{24(1.7)(.8)} (31^2 - 42^2)$$

$$M_{\text{max}} = 875(5) = 4375$$

$$S = \frac{4375(12)}{1250} = \underline{42}$$

$$I = \frac{875(32)}{32.6} (97,200 - 100)$$

$$I = \frac{5098}{32.6} = \underline{156}$$

$$R = 875^{\#}$$

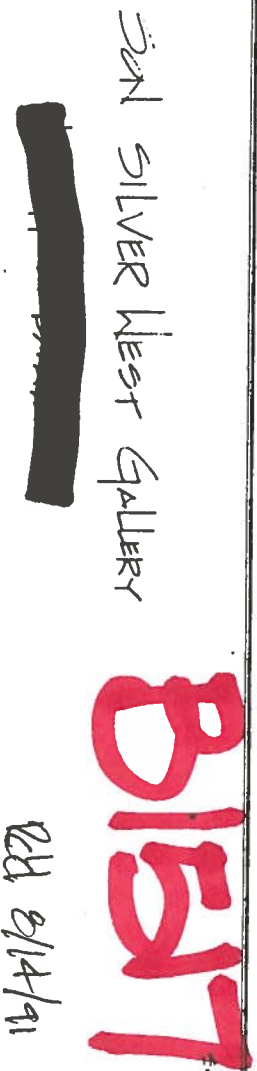
$$S_{4 \times 10} = 49.94$$

$$S_{6 \times 8} = 51.56$$

$$S_{4 \times 10} = 220$$

$$S_{6 \times 8} = 193.6$$

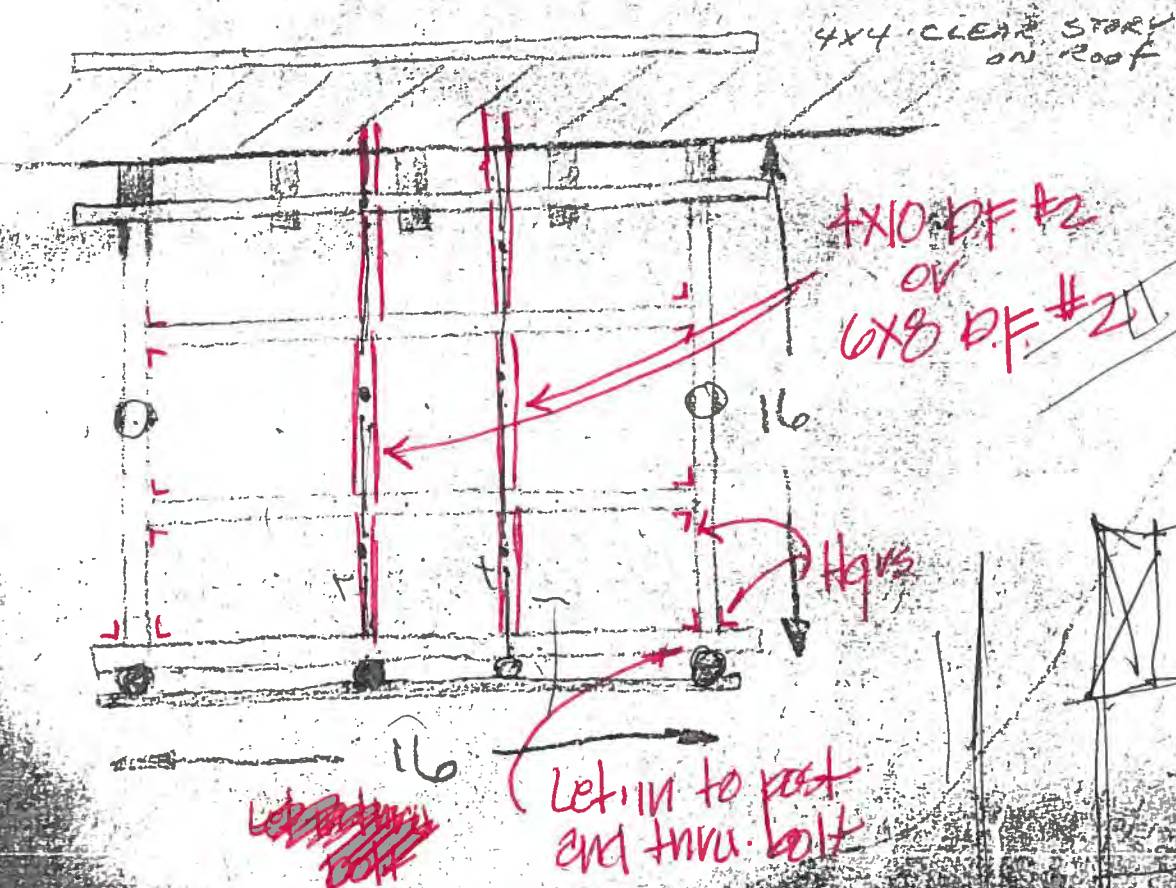
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top -

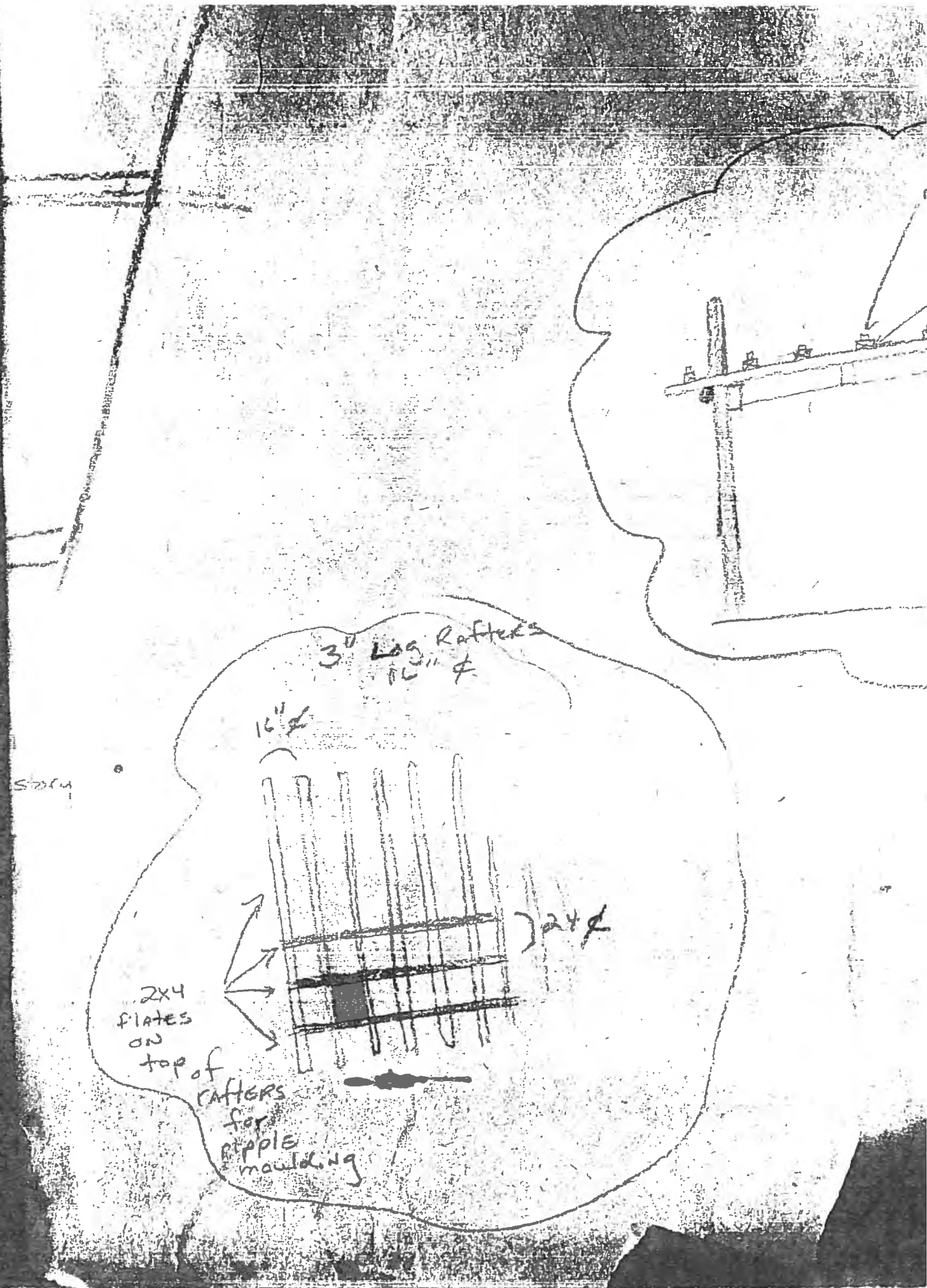


San Silver West Gallery Chile Cage

282-35

TOP VIEW BEAM STRUCTURE
(4x4)







E A S E M E N T

KNOW ALL MEN BY THESE PRESENTS:

That NORTHERN ARIZONA TITLE DIVISION of Phoenix Title and Trust Company, an Arizona corporation, GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by EDWARD R. BALDWIN and EVELYN M. BALDWIN, husband and wife, GRANTEES, has granted and conveyed and does grant and convey to the GRANTEES, their heirs, executors, administrators and assigns, a Perpetual Easement for roadway and utilities purposes, for use jointly with the GRANTOR and its successors in interest, over, across and upon a tract of land described as follows:

The Northern ten feet (10') of Tract 39 and the Southerly ten feet (10') of Tract 40 of Broken Arrow Subdivision, according to the Map recorded in Book 2 of Maps and Plats at Page 71 thereof, Records of Coconino County, Arizona.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal this 11 day of March, 1966.

NORTHERN ARIZONA TITLE DIVISION
of Phoenix Title and Trust Company,
an Arizona corporation

By Fred W. Crocker, II

ATTEST:

Fern Ottison
Asst. Secretary

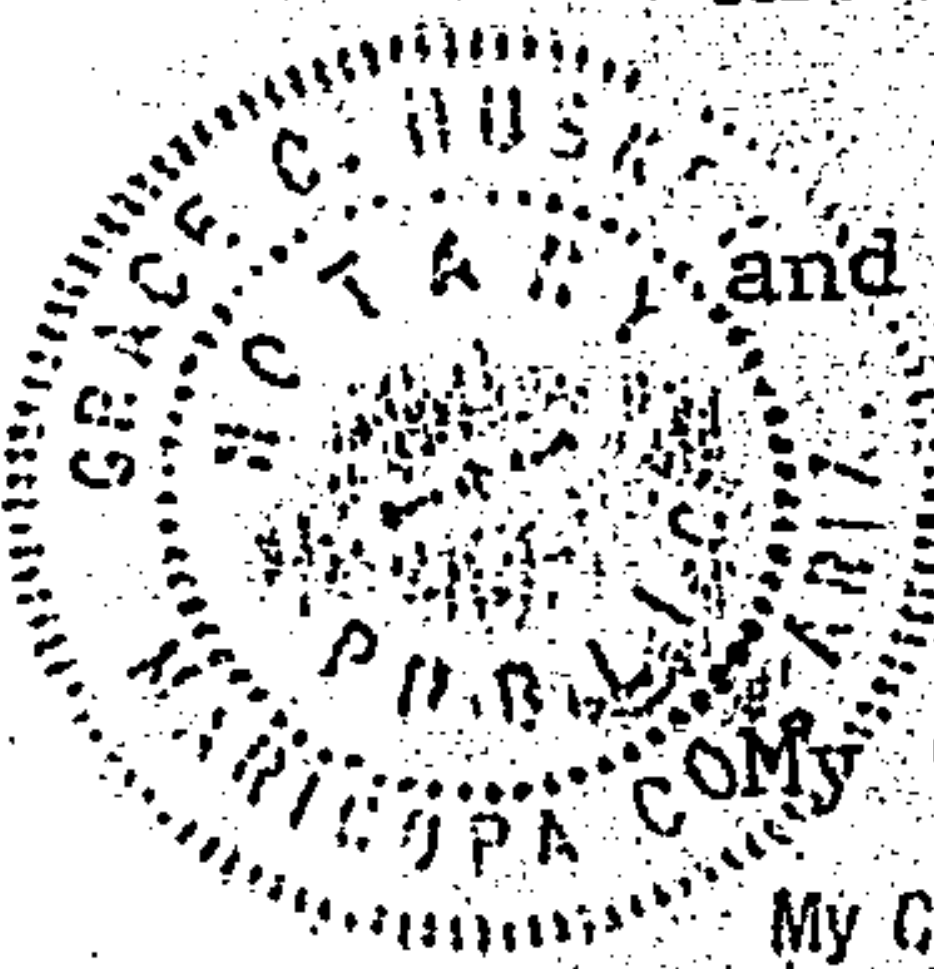
STATE OF ARIZONA }
County of Coconino } ss.

ON THIS, the 11th day of March, 1966, before me, the undersigned officer, personally appeared Fred W. Crocker, II and Fern Ottison who acknowledged themselves to be the President and Assistant Secretary of NORTHERN ARIZONA TITLE DIVISION of Phoenix Title and Trust Company, an Arizona corporation, and

DOCKET 250 PAGE 114
-1-

15015

that they, as such officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the NORTHERN ARIZONA TITLE DIVISION of PHOENIX TITLE AND TRUST COMPANY, an Arizona corporation, by themselves as such officers.



IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Grace C. Huskey
Notary Public

Commission Expires:

My Commission Expires June 27, 1967

No. 2203
RECORDED AT REQUEST OF Northern Arizona Title Co.
March 22nd A. D. 19 66 at 3:00 o'clock P. M.
In Docket 250 Page 114-115
of Maricopa County, Arizona
By Edna Mae Thornton County Recorder
Virginia Herselger Deputy

DOCKET 250 PAGE 115

From: Brian Pearson <BPearson@sedonaaz.gov> 08-Sep-2011 16:46
To: John O'Brien <jo'brien@sedonaaz.gov>
Subject: Re: Son Silver West
Attachments: MESSAGE HTML (995 bytes)
MESSAGE TEXT (644 bytes)

Understood.

>>> John O'Brien 9/8/2011 4:02 PM >>>

Just to clarify, please do not issue building permits for the Son Silver West coffee shop or the structure that is covering their vending machine. They have zoning issues with these.

We are OK to issue the permit for the wrought iron fence they constructed along SR 179.

Please get with me if you have any questions.

Thanks.

John

John O'Brien, Director
Community Development Department
928-204-7123

Beginning May 22, 2011 through September 10, 2011 City Offices will be open Monday through Thursday from 7:00 a.m. to 6:00 p.m. City Offices will be CLOSED on Fridays during this time.

Date: 04-Oct-2011 11:52
From: John O'Brien <JO'Brien@sedonaaz.gov>
To: rio@son
silverwest.com <rio@sonsilverwest.com>
Subject: Board of Adjustment Hearing on
your Appeal
Attachments:

MESSAGE TEXT (566 bytes)

Forwarded: No

=====

=====

Hi Rio,

Just an FYI that the Board of Adjustment meeting to hear your appeal of my decision to not allow expansion of the Son Silver West Gallery as noted in my September 12, 2011 letter will be held at 1:00 p.m. on Friday, December 2, 2011 in the Vultee Conference Room at City Hall.

I will
I get you the staff memo and agenda for the meeting about seven to ten days prior to the hearing. You will need to be in attendance at this meeting.

Please get
t with me if you have any questions.

John

John O'Brien, Director
Community Development
Department
928-204-7123



Permit City of Sedona

102 Roadrunner Drive Sedona, Arizona 86336 (928) 282-1154

Building Permit

B9254-D

Important Dates

Final

Ext. To

C/O

Cancelled

PX

Expired

FX

Revoked

9/13/06

Property Information

Project Description	Census Code	Zone Use Code	Parcel #
DEMO PART OF STORAGE BUILDING	649		401-31-012A
Construction Address	1476 HIGHWAY 179		
Lot #	Subdivision	Broken Arrow	
Suite #	Building Name		
Owner / Tenant	WILLIAM & LINDA ROBSON		
Address	1476 HIGHWAY 179		
City / State / Zip	SEDONA	AZ	86336
Phone #	282-3580	Fax #	
Contractor	OWNER		
Address			
City / State / Zip			
License #	Tax #		
Phone #	Fax #		

Public Works

WW Caselle #	DISCH	Authority to Connect	County W.W. #
	INC/DEC		
Type	Size	ADEQ W.W. #	
Category/Units			
Right of Way Permits		FEMA FPM	FI Ctrl Approved
City	Culvert Size		
ADOT	Cut	Fill	Devel. Permit
Engineer Approved By		Approval Date	

Issuance

Comments/Conditions of Approval

1. All Demolition material shall be disposed of in a proper manner.
2. No trees shall be removed under this permit.
3. This permit is only valid until June 15, 2006 and the Demolition work must be completed by June 15, 2006.
4. This permit shall also be for removal of the "storage rack system" as we discussed on February 16, 2006.

FORWARD 9/13/06

Cor O (N) B

The issuance of this permit is based upon the approved plans, specifications and other data. Issuance of this permit shall not prevent the City from thereafter requiring the correction of errors in said plans, specifications and other data. This permit becomes null and void if the construction work authorized is not begun within 180 days from date of issue or if at any time prior to final inspection and approval the work is suspended or abandoned for a period of 180 days.

03/02/06

Signature of Owner or Authorized Agent

Date Issued

Zoning Details

Zoning Dist	Front	Rear	Side 1	Side 2
RS-18b				
Res. Impact:				
Lodg. Impact:				
Comm. Impact:				
Zoning Case #	CUP92-03			
Building Height				
Lot Coverage (%)				
Footprint				
Alternate Standards	H/D LRV Bldg. Finish			

Comments:

Application Approved By: JW Zoning Approval Date: 02/28/06

Building Details

Type of Construction	Occupancy Classes				
Residence	Garage	Carport	Deck	Patio	
Shed	Bsmt	Addition	Remodel	Demo	
Commrcl	Deck	Patio	# Dwellings		
Access	Existg	Addn	# Stories		
Subject to Impact			# Permit Lodging		
			# Impact Lodging 0		

Comments:

Application Approved By: JW Building Approval Date: 02/28/06

Fees

Calc. Permit Valuation:	\$3,000.00
Adjusted Permit Valuation:	0 % \$ 0.00
Plan Review Fee:	\$ 0.00
Building Permit Fee:	\$ 0.00
Electrical:	\$ 0.00
Mechanical:	\$ 0.00
Plumbing:	\$ 0.00
Grading Review Fee:	\$0.00
Grading Permit Fee:	\$0.00
Other Fees:	\$ 30.00
Total Permit Fees:	\$30.00
Less Deposit:	\$ 0.00
Permit Fees Due:	\$ 30.00
Impact Fees Due:	
Sewer Cap. Fee Due:	
Total Fees Due:	\$ 30.00

INSPECTION RECORD

BUILDING
PERMIT
NUMBER

B9254-D

		DATE	REMARKS		BY:
PRE-CONST./SETBACK					
FOUNDATIONS: REINFORCEMENT					
U/FER/ GROUND	DATE	BY			
MASONRY/CONCRETE WALLS/BOND BMS.					
UNDERSLAB PLUMBING				PRESS TEST	
ELECTRICAL					
MECHANICAL					
FRAMING					
FLOOR FRAME					
ROOF SHEATHING					
WALL SHEATHING					
PLUMBING TOP-OUT				PRESS TEST	
INTERIOR GAS TEST				PRESS TEST	
ELECTRICAL ROUGH-IN					
MECHANICAL ROUGH-IN					
EXTERIOR LATH					
DRYWALL FASTENERS					
SEWER LINE				PRESS TEST	
GAS YARD LINE				PRESS TEST	
TEMP. ELEC. SERVICE					
FINAL BUILDING	DATE 9/13/06	BY Jim Windham	ENGINEERING	DATE	BY
ZONING	DATE	BY	FIRE DEPARTMENT	DATE	BY
SWIMMING POOL PREGUNITE/ELEC.	DATE	BY	BARRIERS/FINAL	DATE	BY
SPECIAL INSPECTIONS: TYPE - INSPECTOR			REMARKS: Building has been removed. (JLW)		



Building Permit Application

City of Sedona

102 ROADRUNNER DRIVE SEDONA, AZ 86336
(928) 282-1154 or fax (928) 204-7124

Permit # B9254-D
Deposit \$ 2
Date Recd 2/28/06 By DA
Use Code _____
Census Code _____

Property / Owner

Demo Part of Storage Building
Project Description

3,000 401-31-012A
Approximate Cost Assessor Parcel No.

1476 Hwy 179
Construction Address

41 Broken Arrow
Lot No. Subdivision

Suite No. Building Name (if applicable)
Son Silver West
Business Name (if applicable)

William and Linda Robson
Owner/Business Tenant Name

1476 Hwy 179
Mailing Address

Sedona AZ 86336
City State Zip

282-3580
Phone No. Fax No.

Residential Square Footage

New Residential Area

Garage _____
Deck _____
Covered Patio _____
Shed _____
Unfinished Basement _____

Residential Addition _____

Residential Remodel _____

Contractor

Owner
Contractor

Address

City State Zip

Phone No. License No.

Fax No. Tax No.

Architect / Designer

Address

City State Zip

Phone No. Fax No.

Commercial Square Footage

New Commercial Area

Deck _____
Covered Patio _____
Accessory Building _____

Existing Commercial _____

Commercial Addition _____

Building Details

Building Footprint _____

Bldg Area Demolished _____

Number of Stories _____

Dwelling Units _____ Lodging Units _____

Applicant Signature _____ Date _____

Tracing: City of Sedona
 Dept of Community Development
 928-204-7124

Att: Mr. Jim Windham

From: Son Silver West Valley
 L. Rose Roberts
 920 845 58



City of Sedona
 Department of Community Development

James Windham
 Development Services Supervisor

102 Roadrunner Drive
 Sedona, AZ 86336

Phone: (928) 204-7114

Fax: (928) 204-7124

e-mail: jwindham@sedonaaz.gov

3 pages

Re: submitting - application for demolition of
 shed behind existing blue shed.

Please note: there will be no noise, dust, dirt with this
 removal. Can be completed in approx two
 work days.

Thank you and let us know what further
 information you might need and cost of permit.
 Linda Rose Roberts

DEPT. B9254-D

Residential Addition _____
 Residential Remodel _____

Bldg Area Demolished _____

Number of Stories _____

Dwelling Units _____

Lodging Units _____

Applicant Signature

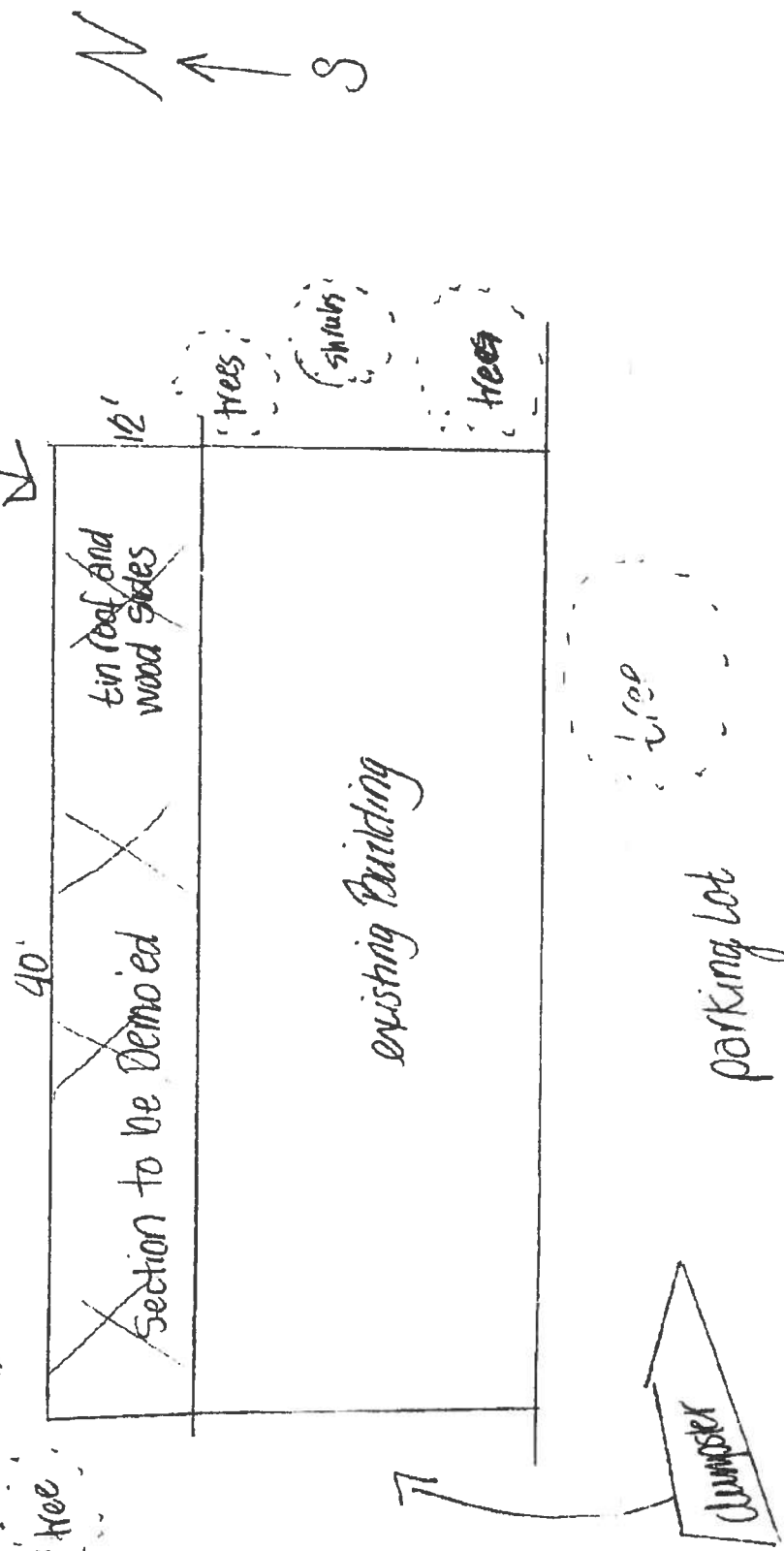


Date

12.21.06

#401-01-012A
501 Silver West Gallery
1476 Hwy 179 Sedona, AZ

Permit to remove shed



02/22/06
JHR



130

150

40

Along Demo

150

41

150

140

79.90

42.5

Date: 23-Dec-2011 11:23
 From: "Rio Robson" <Rio@sonsilverwest.com> <Rio@sonsilverwest.com>
 To: John O'Brien <jo'brien@sedonaaz.gov>
 Subject: Re: Son Silver West Status
 Attachments:
 MESSAGE TEXT (2196 bytes)
 Mime.822 (3641 bytes)

Forwarded: No

=====

Dear John,

Sounds like a great plan, I will come by and talk about the site plan after Christmas.

Thank you again

Happy holidays to you and the family.

Rio

----- Original Message ---

From: "John O'Brien" <JO'Brien@sedonaaz.gov>
 To: <Rio@sonsilverwest.com>
 Sent: Wednesday, December 21, 2011 4:57 PM
 Subject: Son Silver West Status

Hi Rio
 and Rio,

I have been giving your building permit situation at Son Silver West some thought lately and how we might proceed. Rather than get into some long drawn out enforcement action based on what you might have or might not have constructed at Son Silver West over the years, here is how I would like to proceed:

1. You have already shut down the coffee shop and this was my primary concern. I appreciate you taking care of this issue.
2. The other two issues are the construction of the shade structure behind the former coffee shop and the roof system attached to the storage building.

You claim these were replacements of other similar structures that were in disrepair and were constructed many years ago. I cannot locate building permits on any of these older structures, but they may have been constructed before Sedona incorporated. I cannot make this determination with the information that I have. I am OK with you leaving them as they are currently constructed.

3. By March 1, 2012, I am requesting that you provide to me a site plan of your property showing all of the existing buildings, their use and parking. The site plan needs to be dated.

4. By March 1, 2012, I am requesting that you provide photographs of the exteriors of all of the buildings. The photographs need to be dated and their use labeled and keyed to the site plan.

This documentation will establish what you are allowed to have at Son Silver West at this time and will give us a historical record of the allowable uses on your property. Then, from this point forward, there won't be a question with what is allowed and what is not allowed.

I feel this is a fair compromise to resolve this situation. Please let me know your thoughts.

Thanks.

John

John O'Brien, Director
Community Development Department
928-204
-7123



CITY OF SEDONA
BUILDING SAFETY DIVISION
APPLICATION FOR PLAN REVIEW AND BUILDING PERMIT

2940 Southwest Drive
Post Office Box 30002
Sedona, Arizona 86336
(602) 282-3269
B2039
3/11/92

APPLICANT: COMPLETE NUMBERED SPACES - PRESS HARD TO MAKE COPIES										BUILDING PERMIT NUMBER B2039			
1 CONSTRUCTION ADDRESS 1476 HWY. 179					ZONE DIST. C.R.S. B000					BUILDING PERMIT NUMBER B2039			
2 LEGAL LOT/SPACE 41		BLK. 101	SUB DIVISION HOME PARK		ZONING CASE #		B.A. CASE #						
3 PARCEL NO. BILL ROBSON		CENSUS TR.		COUNTY COCONINO		F. YD.		R. YD.	S. YD. 1	S. YD. 2	FRONTAGE	BLDG. HT.	LOT COVER %
4 OWNER 1476 HWY. 179					PHONE 602 3 80/5497					REMARKS: Previously constructed building.			
5 MAILING ADDRESS SEDONA, AZ 86336					ZIP								
6 LICENSE # OWNER					CITY SALES TAX #					REMARKS: Shop built without Permit or inspections Building appears to be structurally sound.			
7 CONTRACTOR					PHONE								
8 ADDRESS					ZIP					REMARKS: Shop built without Permit or inspections Building appears to be structurally sound.			
9 DESCRIBE WORK/SPECIFY USE NEW COMMERCIAL STRUCTURE					ZONING APPVD. BY: DATE:								
10 VALUATION SUBMITTED 6357					REVISED VALUATION					FLOOD CONTROL APPVD.			
11 LIST SOURCE OF UTILITIES		GAS CO. N/A	ELEC. CO. ARS.	WATER CO. OR SOURCE N/A	SEPTIC NO.					HIGHWAY R.O.W. APPVD.		HEALTH DEPT. APPVD.	
CULVERT SIZE		TOTAL CUT		TOTAL FILL		COMPACTION TESTS		CONSTR. TYPE JA		OCCUPANCY M.1		OCCUP. LOAD	
RESD. AREA		GAR. AREA		MISC. AREA		COMM. AREA		BLDG. HT.		SPEC INSP. REQ'D		NO. OF DWELLING UNITS	
YES <input type="checkbox"/>		NO <input type="checkbox"/>		YES <input type="checkbox"/>		NO <input type="checkbox"/>		CONC. <input type="checkbox"/>		STEEL <input type="checkbox"/>		OTHER <input type="checkbox"/>	
CONDITIONS FOR APPROVAL:													
1/11/93 Corro (PA) B2													
1/11/93													
1/13/92													
SIGNATURE OF BUILDING OFFICIAL/AUTHORIZED REPRESENTATIVE													
DATE													
The building official shall require that contractors be licensed as required by Arizona State Law before issuing permits to same. The building official may also require contractors or builders to either be licensed or otherwise retain the services of someone who is so licensed or certified, as may be necessary to assure the proper installation of building components, equipment or appliances consistent with the technical codes or the approved installation specifications and standards. Homeowner builders may construct, add to, alter or remodel their own R-3 homes, provided they are personally occupying or occupy upon completion within thirty days of the final inspection. Non-occupancy or discontinued occupancy, until a period of one year has lapsed, shall constitute a violation of this code. The building official may furthermore report such activities to the Registrar of Contractors.													
SIGNATURE OF OWNER													
DATE													
I hereby certify that I have read and examined this permit and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.													
The issuance of a permit based upon plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.													
This permit becomes null and void if the construction work authorized is not begun within 180 days from date of issue or if at any time prior to final inspection and approval the work is suspended or abandoned for a period of 180 days.													
CALL FOR INSPECTION													
COVER NO WORK UNTIL INSPECTED AND APPROVED													
Bill Robson 1-11-93													
Signature of Owner or Authorized Agent													
Date													
PLAN REVIEW AND PERMIT FEES													
PLAN CHECK DEPOSIT										\$ 50.00			
PLAN CHECK FEE										\$ 54.75			
BUILDING										\$ 54.75			
ELECTRICAL										\$ 28.50			
MECHANICAL										\$ 14.00			
PLUMBING													
GRADING PLAN CHECK													
GRADING PERMIT													
OTHER										INVESTIGATION FEE. 94.00			
TOTAL FEES										\$ 275.05			
LESS AMOUNT PAID										\$ 50.00			
TOTAL DUE										\$ 225.05			



CITY OF SEDONA
PLAN REVIEW APPLICATION

Plan Check # B2039
Deposit: \$50.00
Date Received: 9/14/92

401-31-41
41 Brokenarrow Coconino
Assessor's Parcel # 1476 Hwy. County

Project Address

Lot No. / Suite 12 Subdivision / Building Broken Arrow

OWNER / TENANT Bill & Rose Robson

Mailing Address 1476 Hwy. 179

Phone 252-5580, 282-5497

Description of Construction Addition

Approx. Construction Valuation

Health Permit # ☐ Permit to Construct attached

IF APPLICABLE:

Architect/Designer

Address Phone

General Contractor owner

Address

Phone

License Type License # State Sales Tax #

Applicant's Signature William B. Robson Date 9-14-92

*Applications will not be accepted or considered complete until all applicable information and plans are submitted and the Plan Review deposit is received.

CITY ENGINEER

- ☐ Revisions submitted as requested. Date submitted: _____
☐ 18" x 20-ft. (min.) culvert with apron flares required under driveway at barrow ditch.
☐ RESUBMIT
☐ Show proposed contours and estimate total cut and total fill yardage.

Comments: _____

Approved by _____ Date _____

FIRE DEPARTMENT

Remarks / Attachments

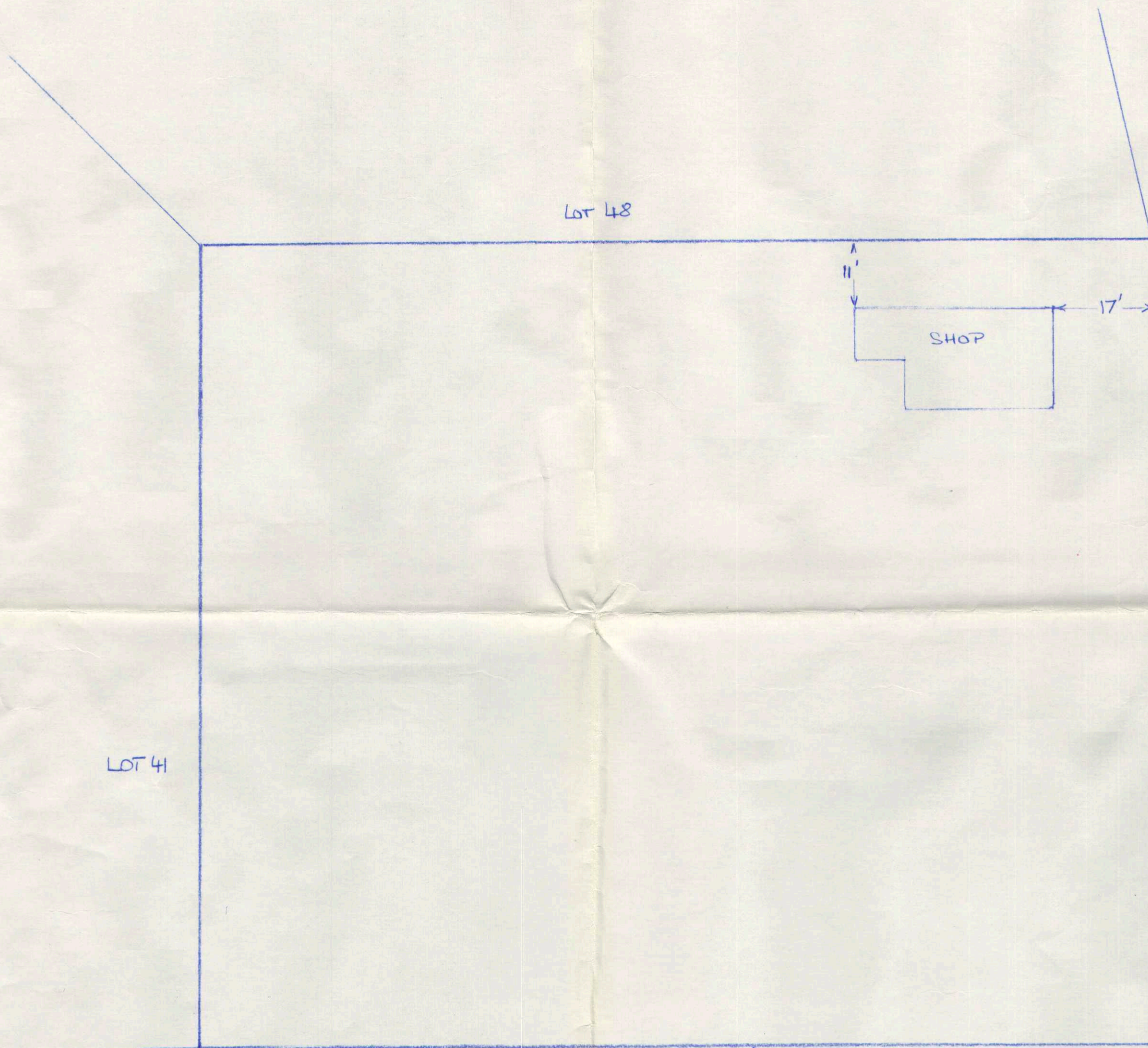
☐ RESUBMIT

Approved by _____ Date _____

PLAN CHECK / BUILDING PERMIT FEES

B 2039

<u>BUILDING:</u>	<u>VALUATION</u>	<u>FEES</u>
Living Area		
Garage / Carport		
Decks / Patios		
Fences		45.00
Retaining Walls		45.00
Other: <i>Stop 489 x 13</i>	6,357.00 2,000 4,357.00	39.21
BUILDING PERMIT	90.00	84.21
PLAN CHECK @ 65%	58.50	57.13
<u>ELECTRICAL:</u> To issue	\$15.00	
	<i>18 x .75</i>	
Floor Area () X .035	<i>13.50</i>	
TOTAL ELECTRICAL.....	<i>28.50</i>	28.50
<u>PLUMBING:</u> To issue	\$15.00	
Sewer		
Water System		
Gas System		
Traps		
Vac. Brkrs. / Hose Bibbs		
Water Heater		
TOTAL PLUMBING.....		
<u>MECHANICAL:</u> To issue	\$15.00	
Furnace ✓	9.00	
Fireplace		
Cooling System		
Range Hood		
TOTAL MECHANICAL.....		24.00
GRAND TOTAL	<i>177.00</i>	
LESS DEPOSIT	<i>30.00</i>	
BALANCE DUE	<i>147.00</i>	



HIGHWAY 179 160'

As. built drawings
... constructed w/o permit
or inspections.

APPROVED	
This set of plans and specifications MUST be at job site during construction. It is unlawful to alter or change same, or to deviate therefrom, without written approval from Sedona Building Safety Division. The stamping of this plan and specifications shall NOT be held to permit or to be an excuse of the violation of any provisions of any City Ordinance or State Code.	
BUILDING <i>Bru</i>	DATE <i>9/30/92</i>
ENGINEERING <i>John Bru</i>	DATE <i>10-2-92</i>
PLANNING/ZONING	DATE
FLOOD CONTROL	DATE
FIRE DISTRICT	DATE
BUILDING SAFETY DIVISION CITY OF SEDONA	

DEPT. B2039

Bill + Rose Robson
LOT # 41
BROKEN ARROW VEST
476 HIGHWAY 179
SEDONA AZ 86336

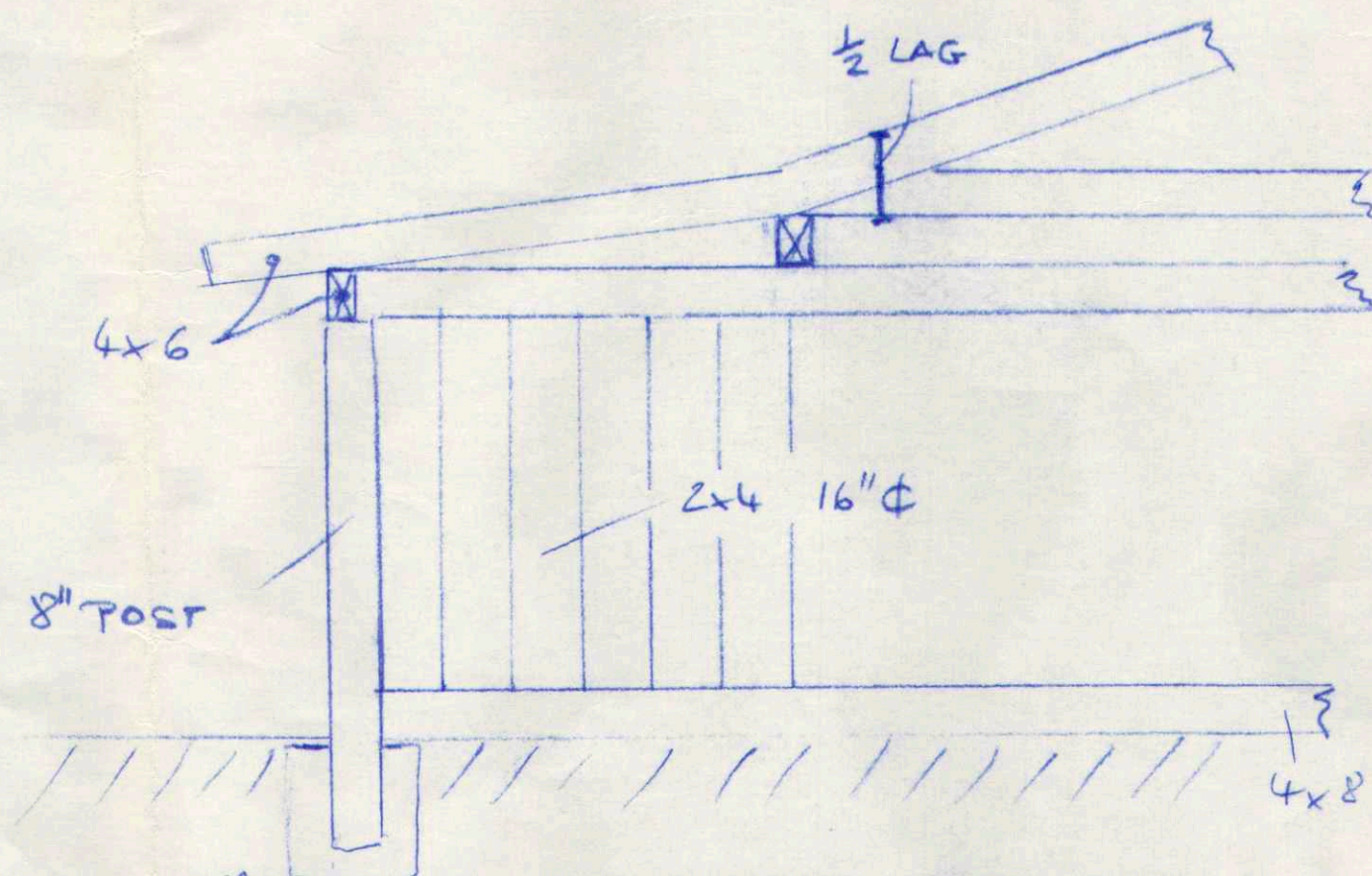
SCALE 1/16" = 1'

REVISIONS	BY

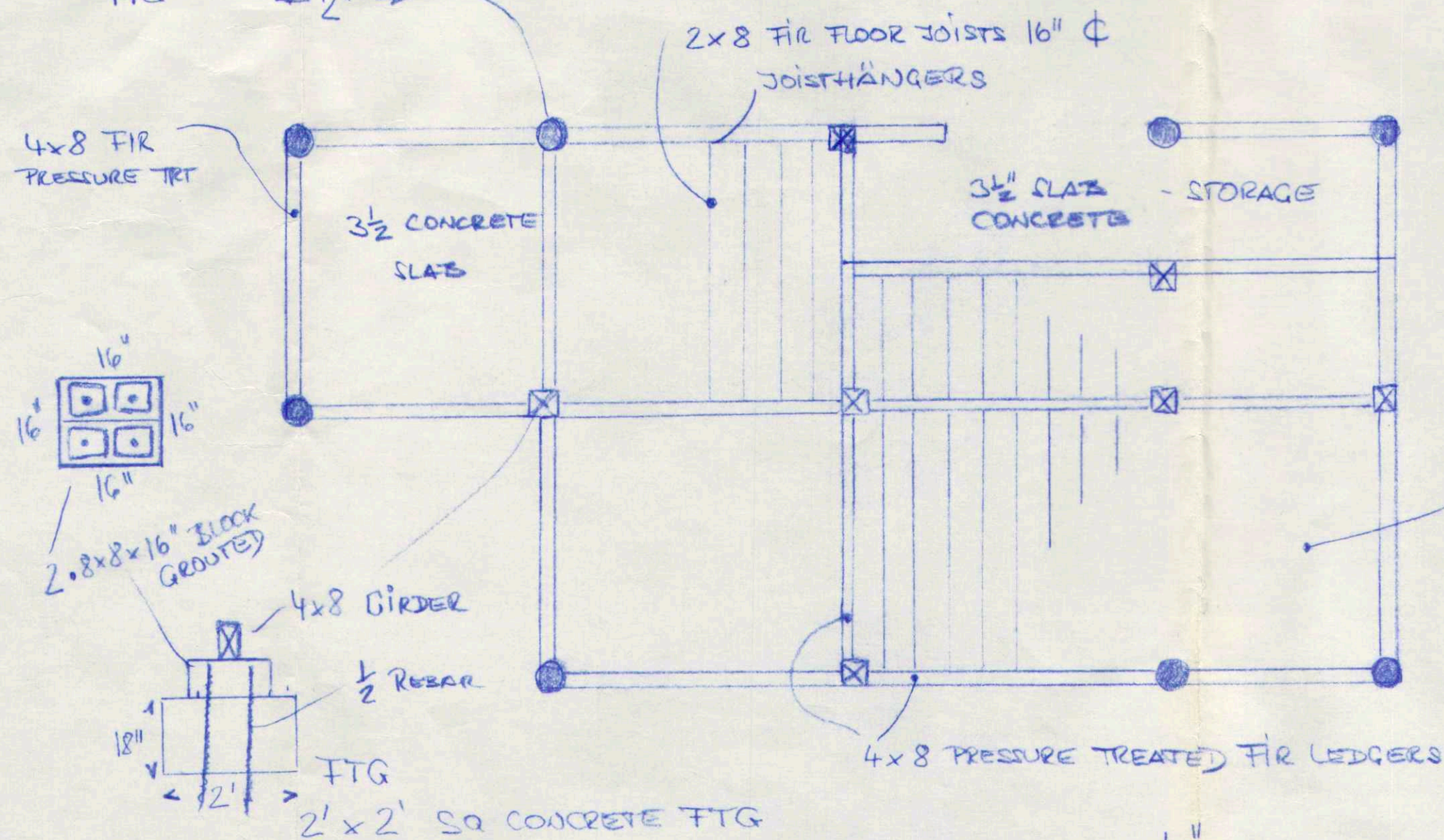
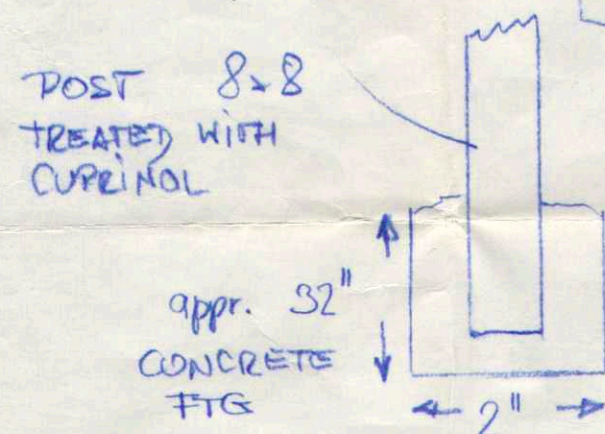
DRAWN
CHECKED
DATE
SCALE
JOB NO.
SHEET I
OF SHEETS

PROPERTY OF BILL + ROSE ROBSON
 LOT # 41 BROOKEN ARROW WEST
 1476 HIGHWAY 179, SEDONA AZ 86336
 PAGE I of II

CROSS SECTION:



FLOOR DETAILS:
FOUNDATION:

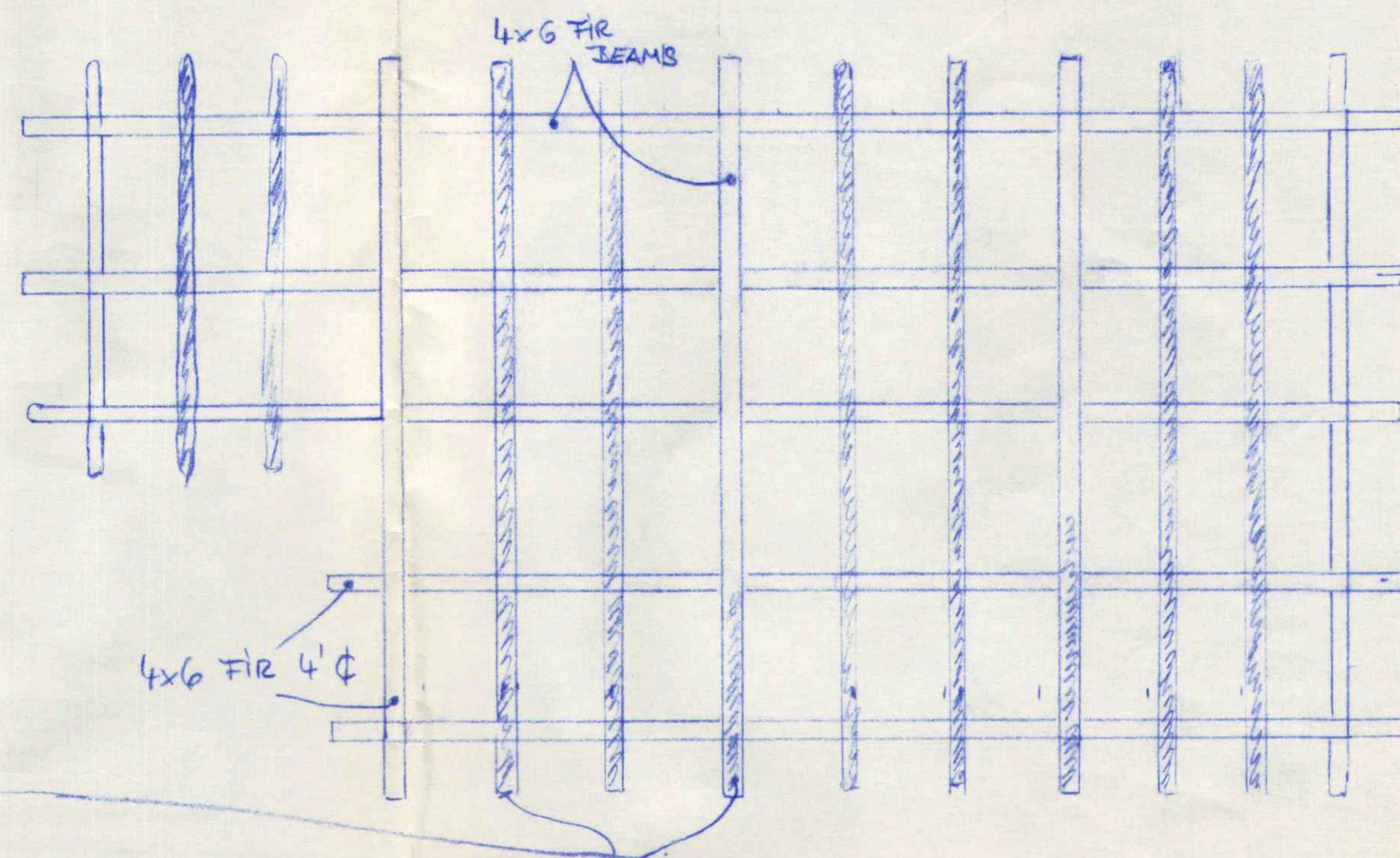


SCALE: 1/4" = 1 FOOT

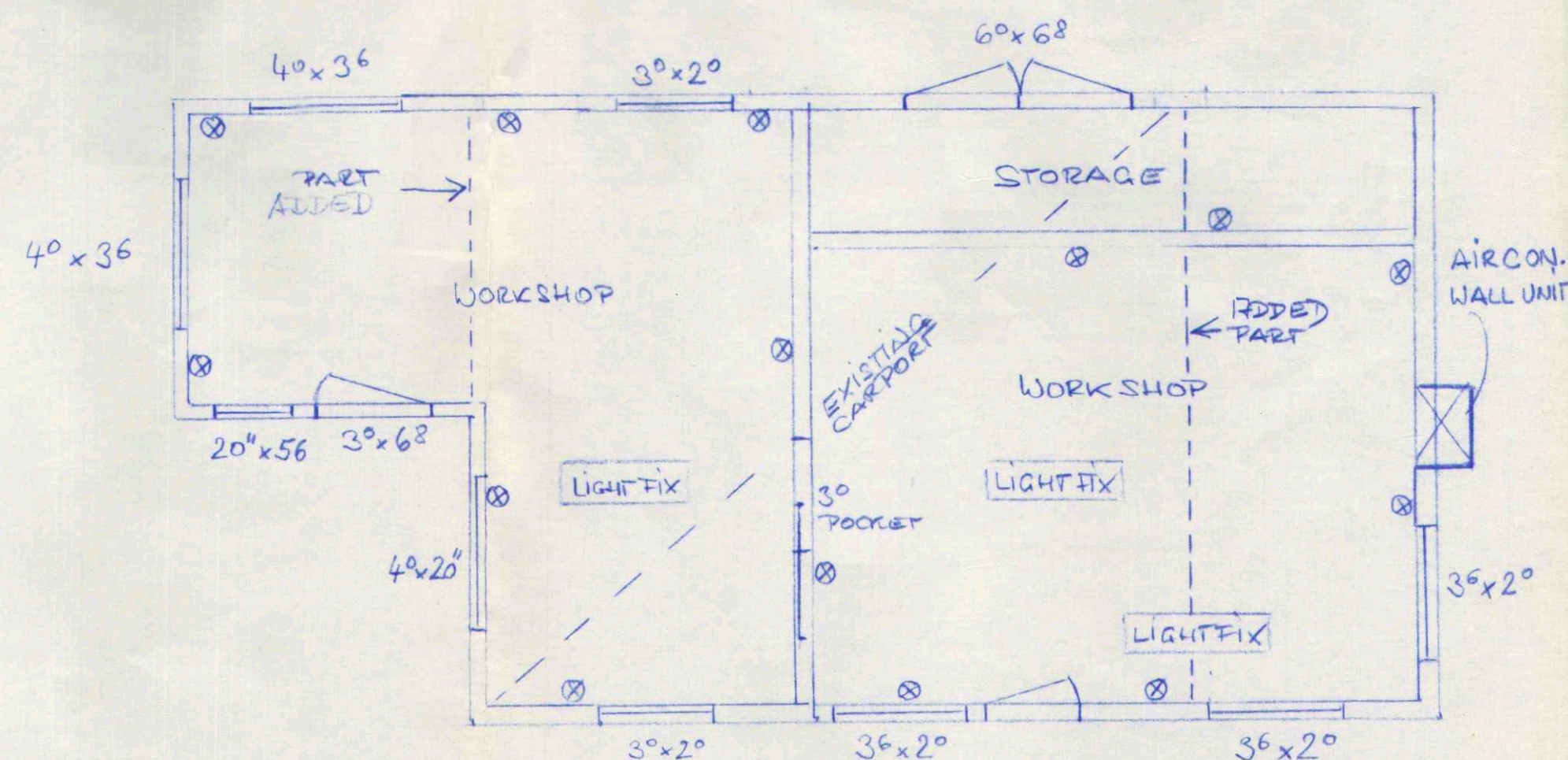
PROVIDE UNDERFLOOR
 ACCESS 18"x24" AND
 VENTILATION 1 SQ FT / 150 SQ FT. OF FLOOR AREA

ROOF FRAMING:

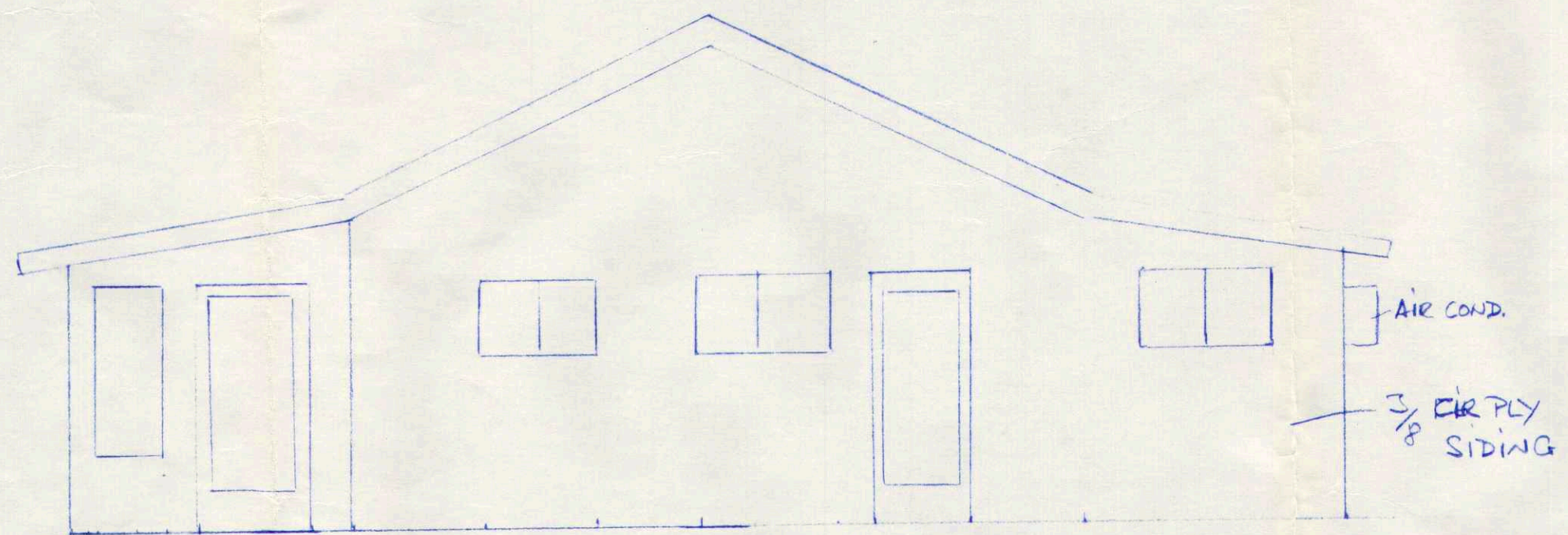
ROOF SHEETING 5/8 PLY CDX



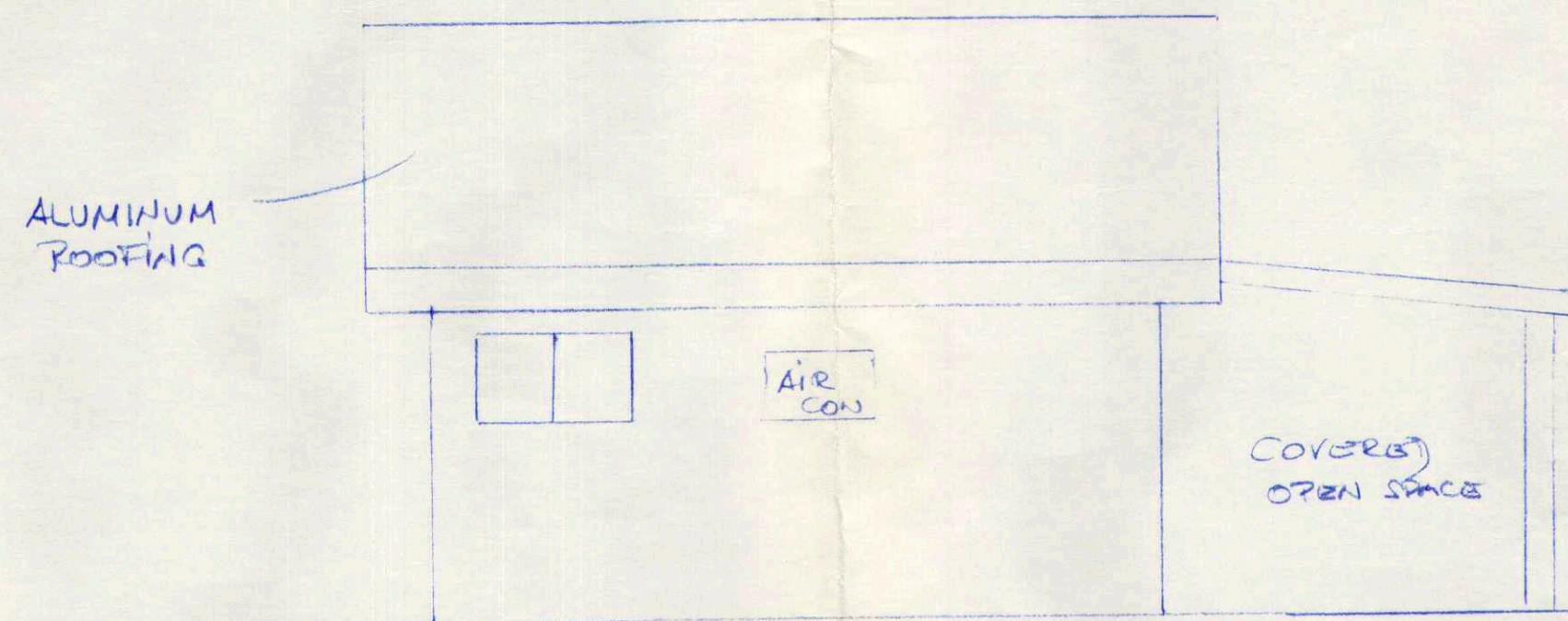
FLOOR PLAN:
ELECTRIC:
NO PLUMBING



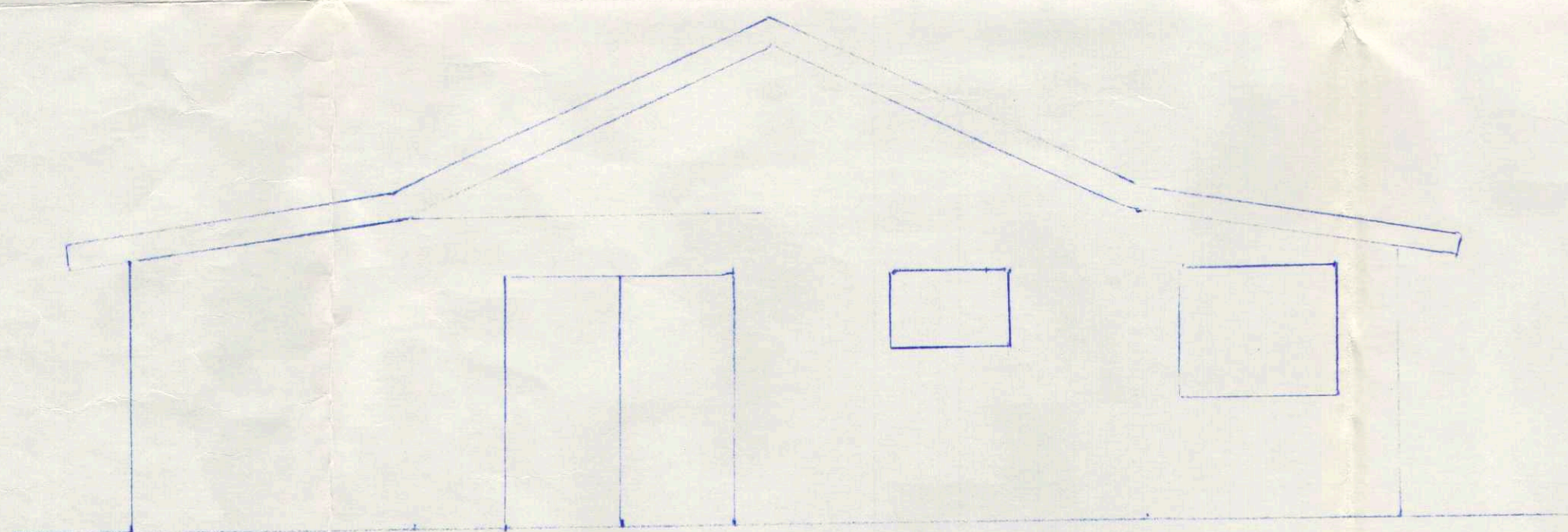
WALLS: 2x4, 16" ϕ , HEIGHT 8'
 1/2 ROCK 3/8 AC PLY,
 R 11 FIBERGLASS INSULATION



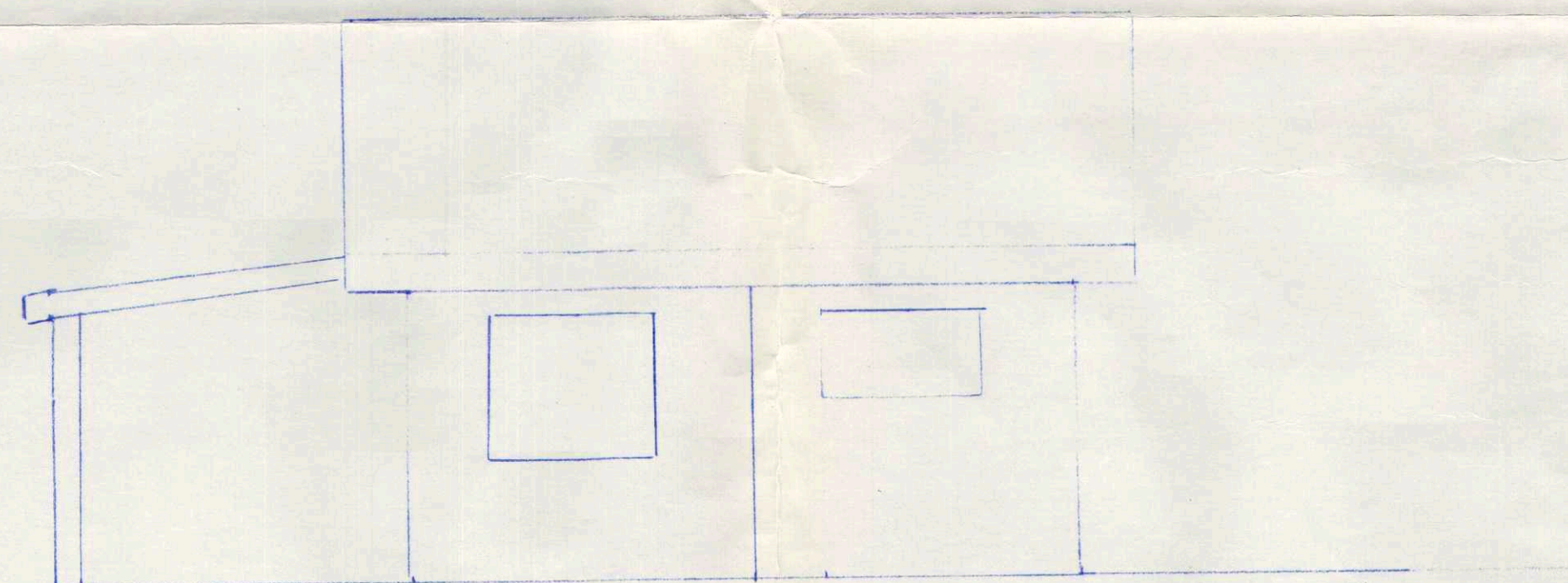
EAST ELEV.



NORTH ELEV.



WEST ELEV.



SOUTH ELEV.